S. HRG. 101-401

NOMINATIONS OF KATHLEEN DAY KOCH, JEAN McKEE, BILL R. PHILLIPS, TONY ARMENDARIZ, PAMELA TALKIN, AND RONALD G. HEIN

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NOMINATION OF KATHLEEN DAY KOCH, TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, JEAN McKEE, TONY ARMENDARIZ, AND PAMELA TALKIN, TO BE MEMBERS OF THE FEDERAL LABOR RELATIONS AUTHORITY, BILL R. PHILLIPS, TO BE DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, AND RONALD G. HEIN, TO BE U.S. MARSHAL FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

OCTOBER 27, 1989

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

24-756 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-9.

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOHN GLENN, Ohio, *Chairman*

SAM NUNN, Georgia
CARL LEVIN, Michigan
JIM SASSER, Tennessee
DAVID PRYOR, Arkansas
JEFF BINGAMAN, New Mexico
HERBERT KOHL, Wisconsin
JOSEPH I. LIEBERMAN, Connecticut

WILLIAM V. ROTH, JR., Delaware
TED STEVENS, Alaska
WILLIAM S. COHEN, Maine
WARREN B. RUDMAN, New Hampshire
JOHN HEINZ, Pennsylvania
PETE WILSON, California

LEONARD WEISS, *Staff Director*
BRIAN A. DETTELBACH, *Assistant Counsel*
JO ANNE BARNHART, *Minority Staff Director*
SUSANNE MARSHALL, *Minority Executive Assistant*
MICHAL SUE PROSSER, *Chief Clerk*

CONTENTS

Opening statements: Page

Senator Glenn 1
Senator Warner 2
Senator Pryor 2

WITNESSES

FRIDAY, OCTOBER 27, 1989

Kathleen Day Koch, nominee to be general counsel of the Federal Labor Relations Authority 4
Biographical information and responses to prehearing questions 9
Jean McKee, nominee to be member of the Federal Labor Relations Authority 4
Biographical information and responses to prehearing questions 30
Responses to written questions submitted by Senator Glenn 62
Bill R. Phillips, nominee to be Deputy Director of the Office of Personnel Management 5
Biographical information and responses to prehearing questions 68
Tony Armendariz, nominee to be member of the Federal Labor Relations Authority 5
Biographical information and responses to prehearing questions 99
Responses to written questions submitted by Senator Glenn 117
Pamela Talkin, nominee to be member of the Federal Labor Relations Authority 5
Biographical information and responses to prehearing questions 118
Responses to written questions submitted by Senator Glenn 139
Ronald G. Hein, nominee to be U.S. marshall for the Superior Court of the District of Columbia 6
Prepared statement 141
Biographical information and responses to prehearing questions 147

NOMINATIONS OF KATHLEEN DAY KOCH, JEAN McKEE, BILL R. PHILLIPS, TONY ARMENDARIZ, PAMELA TALKIN, AND RONALD G. HEIN

FRIDAY, OCTOBER 27, 1989

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room SD-342, Dirksen Senate Office Building, Hon. David Pryor presiding.

Present: Senator Pryor.

Staff present: Brian Dettelbach and Jack Sparks (Senator Glenn); Susanne Marshall (Senator Roth); and Ed Gleiman (Senator Pryor).

Senator PRYOR. Good morning. The comment has just been made behind me it looks like I'm outnumbered this morning. We welcome all of you.

First, let me say that I am filling in this morning for Senator Glenn, who is the Chairman, of course, of the Governmental Affairs Committee. He asked me to chair this full Committee. He also has a statement for the record which I will have inserted at the appropriate place in the record.

[The prepared statement of Chairman Glenn follows:]

OPENING STATEMENT OF CHAIRMAN GLENN

Good morning. Today the committee considers several nominations: Jean McKee, Pamela Talkin, and Tony Armendariz as members to the Federal Labor Relations Authority [FLRA]; Kathleen Koch, as the FLRA general counsel; Bill Phillips, to be Deputy Director of the Office of Personnel Management [OPM]; and, Ronald Hein, to assume the duties of a newly-created position, that of U.S. marshal for the Superior Court of the District of Columbia.

I, like many others, am glad to have before us today at one table what would be a working quorum of FLRA members. It has been almost 1 year to the day—October 31, 1988—since Jerry Calhoun resigned from the Board. Mr. Calhoun's resignation left the FLRA without the quorum necessary to carry on the substantial progress he had made in reducing both the overall backlog and response time for FLRA complaints.

Without the ability to render any decisions for almost a year, the backlog of cases has risen to over 530. I do not mean to disparage either the efforts or commitments of Jean McKee, who served as acting FLRA chairman during this period, because I know she tried her best. But it is hard to accomplish anything on a three-member board when two of the seats are empty.

So I am happy we can consider all of the FLRA nominations today. I know Ms. McKee has set lofty goals for the new members to meet in attacking this backlog. You will have your hands full, but I believe and hope you will be up to that challenge.

I would also like to welcome our two other nominees here today. I understand that Bill Phillips is Connie Newman's and the President's choice for her deputy at the Office of Personnel Management. I had the privilege of chairing Mrs. Newman's confirmation hearing and am pleased to say that we have forged a good working relationship. Of course, the Federal Government is facing major problems in the recruitment and retention of qualified employees. It is clear that a first step in addressing these problems will be a major overhaul of our Federal pay and benefits system. I know Director Newman has already begun to review these issues and I look forward to working with both of you early next year.

Finally, I want to welcome Mr. Ronald Hein, the nominee to be U.S. marshal for the District of Columbia Superior Court. While this committee has authority for confirmation of judges to serve on the D.C. Superior Court and Court of Appeals, Mr. Hein is the first person nominated to the new position of U.S. marshal for the superior court. That post was created in the 1988 omnibus drug bill to address the uniquely distinct functions performed by the U.S. marshals service in our Nation's Capital.

I am struck by the fact that the D.C. Superior Court workload is higher than that of any Federal district court. I am also cognizant of the tremendous increase in the numbers of prisoners (over 141,000 in fiscal year 1989) and civil and criminal orders which the court system has had to cope with in the last few years. Of course, much of this workload stems from the high percentage of drug-related offenses, a matter which has been addressed in other committee hearings earlier this year.

I thank you all for appearing here today, and for your cooperation withthe committee in preparing for your confirmation hearing today. I look forward to working with all of you in the months ahead.

I would also like to extend my thanks and appreciation to Senator Pryor, who so graciously has agreed to chair this full committee hearing today.

Senator PRYOR. Senator John Warner was going to be here to introduce Kathleen Koch and Jean McKee, and because of a schedule conflict, Senator Warner could not be here this morning. We also have Senator Warner's statement for the record.

[The prepared statement of Senator Warner follows:]

OPENING STATEMENT OF SENATOR WARNER

Mr. Chairman, I am pleased to add to the day's endorsements some introductory remarks on behelf of a highly valued constitutent, Ms. Kathleen Day Koch of Annadale, Virginia.

As you are aware, Ms. Koch has been serving as General Counsel for the Federal Labor Relations Authority since December of 1988. At that time, she was honored with a recess appointment by Former President Ronald Reagan. On June 29, 1989, President George Bush invited Ms. Koch to continue at her post as a part of the new Administration. I commend the President for this wise and excellent choice and am certain he was greatly pleased with her decision to accept.

A brief examination of Ms. Koch's resume clearly indicates why she is so well suited for this position. All of her legal career has been with the federal government, beginning with the HUD Honors Program in 1977, five challenging years at the Merit Systems Protection Board, and prior to her present assignment, as Associate Counsel to President Ronald Reagan.

Indeed, many of our colleagues serving in committee leadership positions will recall Ms. Koch as the former President's special respresentative in the provision of sensitive background materials for Senate confirmation candidates. Who, then, could we find better qualified than the one who best understands the qualification process.

Over the last several months, she has been serving a critical role at the Federal Labor Relations Authority, and I believe she has earned the right to continue. The new leadership team at FLRA will need a General Councel they can rely on, and I strongly agree that Kathleen Day Koch should be that choice.

Mr. Chairman, I ask for the committee's most expeditious approval of this fine nominee.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Chairman Glenn may also have additional questions for the FLRA nominees which will be submitted for the

record, and he and this Committee would appreciate any and all appropriate responses.

The hearing this morning this is to consider the nominations of Bill Phillips to be Deputy Director of the Office of Personnel Management, Ronald Hein to be U.S. Marshal for the Superior Court of the District of Columbia, and the following nominations to the Federal Labor Relations Authority. Jean McKee to be the Chairperson, Pamela Talkin and Tony Armendariz to be the members of this Authority, and Kathleen Day Koch to be to General Counsel.

I think there has been some concern expressed in some quarters around this city about the speed, or lack of speed, with which the Senate has taken up presidential nominations. I would today like for the record to show that of the six individuals before the Committee today, the nominations of 3, Messrs. Phillips, Hein and Armendariz, were received only last month. The other three nominations were sent to this Committee in July, shortly before the August recess.

As you will hear, the Committee's preconfirmation requirements are quite involved and it is only with some effort that we were able to consider these nominees so quickly. I would also take note and am very proud to state that with the confirmation of the FLRA nominees today, after they are nominated and confirmed by the Senate, there will be a working quorum at that agency for the first time in a year.

The rules of the Governmental Affairs Committee require that an inquiry be conducted into each nominee's experience, qualifications and suitability to serve in the position for which the President of the United States has nominated this particular individual. The Committee has, in fact, received from the nominees financial statements, detailed information on education, employment and professional accomplishments. Each nominee has also responded in writing to a number of prehearing questions, and copies of the biographical information and prehearing question responses will be placed in the record as part of this hearing. The financial statements of each of the nominees are now available for public inspection in the Governmental Affairs Committee office.

The Committee staff, I might say, has interviewed the respective nominees prior to this morning's hearing. In addition, the Committee has received written opinion letters regarding each of the nominees from the Office of Government Ethics. The Committee rules further require that the nominees be under oath during this hearing while testifying on all matters relating to their suitability for office, including policies and programs which they will pursue while in their respective positions.

If the six nominees would at this time please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. KOCH. I do.

Ms. MCKEE. I do.

Mr. ARMENDARIZ. I do.

Ms. TALKIN. I do.

Mr. HEIN. I do.

Mr. PHILLIPS. I do.

Senator PRYOR. Do any of you have a statement that you would like to make? Any statement you would like to have inserted in the record will be so done.

Are there any such statements? Ms. Koch.

Ms. KOCH. Mr. Chairman, I have submitted to your staff a copy of the statement. At this time, if this is the appropriate time, I can go forward with it.

Senator PRYOR. Yes.

TESTIMONY OF KATHLEEN DAY KOCH, NOMINEE TO BE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

Ms. KOCH. Good morning, Mr. Chairman, colleagues, guests. It is indeed a pleasure to have this opportunity to personally appear before this Committee today. It is an honor to be under consideration as the President's nominee to be General Counsel of the Federal Labor Relations Authority.

I sit before you today prepared to respond to your questions with honesty and humility. These two qualities are also crucial to my performance as the General Counsel. I bring to the job a background in Government service in the Federal personnel system, and an enthusiasm for performing my role in a way which increases the efficiency and effectiveness of the Government by improving its labor relations mechanism.

To do that, I must have the honesty which absolutely prohibits a private agenda, either hidden or overt, and I must have the humility to admit that I don't have all the answers but can learn from the many and varied participants in the Federal labor relations system.

I am committed to careful legal work in exercising the discretion which is entrusted to the General Counsel. I also pledge to do my best to provide strong and sensitive management of the resources in the office to accomplish our mission.

At this time I welcome your questions.

Senator PRYOR. I thank you, Ms. Koch.

Ms. McKee?

TESTIMONY OF JEAN McKEE, NOMINEE TO BE MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

Ms. MCKEE. I would like to take this opportunity to say it is a privilege to appear before this Committee again for reappointment to a 5 year full term. I have carried the agency for a long year and it is a great pleasure to have a full quorum present at this hearing to be confirmed and to proceed with the business of the agency.

I want to say that during this long year the staff of the agency has continued to work to draft decisions so that we are prepared for the new members, balancing the quantity that can be on hand ready for anybody to pursue and the complexity of the issues that we do have ready for them.

I would also like to take the opportunity to thank you and your colleagues and the members of your staff for the support they have given us during the last year and for their rapid response when the nominees came forward. It has been a pleasure to work with them and I commend you for the quality of that staff.

Senator PRYOR. Thank you very much, Ms. McKee.
Are there further statements? Yes, Mr. Phillips.

TESTIMONY OF BILL R. PHILLIPS, NOMINEE TO BE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

Mr. PHILLIPS. Thank you, Mr. Chairman. First of all, I would like to also thank the staff for—once they received the nomination—the courtesies and the assistance that was provided, and also the speed and the priority that was given. That is greatly appreciated by all of us, I know.

I have received the highest honor of my career with this nomination and being considered by this Committee and I take this very seriously. I was very attracted when Director Newman first approached me with the opportunity of not only working with Connie Newman, who I think is an outstanding director already, but also that the focus on the Office of Personnel Management has risen considerably in recent months as the public and those in Government are facing many of the challenges that lie ahead in times of limited resources.

And I feel very honored to have been nominated to be a part of that and I feel that I am up to that challenge and look forward to it, and I also look forward to working together with those in the Administration and those in Congress. Thank you very much.

Senator PRYOR. Thank you Mr. Phillips.
Are there further statements? Mr. Armendariz?

TESTIMONY OF TONY ARMENDARIZ, NOMINEE TO BE MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

Mr. ARMENDARIZ. Mr. Chairman, I am pleased to appear before this Committee as a nominee to be a member of the Federal Labor Relations Authority. I am honored to have been nominated by President Bush for this important position. And I'm also aware of the importance that this Committee places in this area of labor management relations.

Although most of my experience has been in the private sector and the last 15 years in State as opposed to Federal employment, I am well acquainted with the area of discrimination, employee grievances and labor management relations. Perhaps an approach from that point of view may add an additional perspective to the resolution of some of the issues at hand.

In seeking the advice and consent of the Senate, I can assure this Committee of my diligent effort and sincere commitment to achieve the goals and the purposes of the Authority. Thank you.

Senator PRYOR. Thank you Mr. Armendariz.
Ms. Talkin?

TESTIMONY OF PAMELA TALKIN, NOMINEE TO BE MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY

Ms. TALKIN. I can only echo my colleagues' comments that it is a great honor to be here and I share with them a willingness to answer your questions and a seriousness with respect to the approach to our mission.

Thank you.

Senator PRYOR. Thank you. Mr. Hein, after all that you have got to say something.

TESTIMONY OF RONALD G. HEIN, NOMINEE TO BE UNITED STATES MARSHAL FOR THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. HEIN. I also consider it an extreme privilege and pleasure to appear before this Committee. I did prepare a written statement and I would offer it into the record.[1] I believe your staff has it at this time.

I am deeply honored and privileged to have been nominated as the first United States Marshal for the Superior Courts. As you are aware, Mr. Chairman, this position was created by the Anti-Drug Abuse Act of 1988. It is a new position. And as the United States Marshal for the Superior Court, I would perform the same functions not unlike a sheriff for a local municipality.

I believe I am eminently qualified for the position. I bring to this position approximately 28 years of professional law enforcement experience. I entered the United States Marshal service in 1970, and I have worked my way through the ranks as a Deputy United States Marshal, a Chief Deputy United States Marshal, the Associate United States Marshal for the Superior Court of the District of Columbia, and I am currently serving as interim United States Marshal by Attorney General Richard Thornburgh.

Thank you very much.

Senator PRYOR. Thank you and good luck on your new mission in this new role. You mentioned sheriff, and it rang a bell with me because I must tell you that my father, grandfather and great grandfather were all sheriffs of our county.

Mr. HEIN. All right.

Senator PRYOR. In fact, my first job was sweeping out the jail house after school in our local county, and that was my first real job. And in sweeping out the jail, I like to say that I met some of my better friends doing that.

Mr. HEIN. It builds character. [Laughter.]

Senator PRYOR. Some of the town's leading citizens, as a matter of fact. Good luck to you.

Senator Ted Stevens also was going to join us this morning. His notes are here, his notebook is here, but Senator Stevens is not here. Evidently he has been detained along the way. I know that he would want to be here.

Let the record also show that the Director of Office of Personnel Management, Connie Newman, is in the audience today. We very much appreciate her presence, and I know that the nominees for these respective positions do.

I'm going to ask four questions, and I will only ask the questions once and then I will have to ask each witness to say "yes" or "no." I would have to have on the record each individual response, but I will ask the questions only once.

---

[1] See p. 141.

Are you aware of anything in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

I will start with Ms. Koch.

Ms. KOCH. No, sir, I'm not.

Ms. MCKEE. No Senator.

Mr. ARMENDARIZ. I am not, sir.

Ms. TALKIN. No, sir.

Mr. PHILLIPS. No, sir.

Mr. HEIN. No, sir.

Senator PRYOR. Second question. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. KOCH. I am aware of no reason.

Ms. MCKEE. I believe there are none.

Mr. ARMENDARIZ. Not to my knowledge.

Ms. TALKIN. None, Senator.

Mr. PHILLIPS. There are none, sir.

Mr. HEIN. Again, no, sir.

Senator PRYOR. If confirmed, do you agree without reservation to appear and testify before any duly constituted Committee of the Congress?

Ms. KOCH. Yes.

Ms. MCKEE. Certainly.

Mr. ARMENDARIZ. Yes, sir.

Ms. TALKIN. Yes.

Mr. PHILLIPS. Yes.

Mr. HEIN. Absolutely.

Senator PRYOR. And fourth, if confirmed, do you agree to fully respond to any request for information by a duly constituted Committee of the Congress and to cooperate fully with the General Accounting Office in any investigation requested by such a Committee?

Ms. KOCH. Yes.

Ms. MCKEE. Yes.

Mr. ARMENDARIZ. Absolutely.

Ms. TALKIN. Yes.

Mr. HEIN. Yes.

Mr. PHILLIPS. I would.

Senator PRYOR. Very good. The Committee record will be kept open in order for members of the Committee to have the opportunity to submit additional written questions to any of the nominees, and I would appreciate very much your prompt attention to any of these requests.

Also let the record indicate that Clarence Thomas, who is the Chairman of the EEOC, and I think also there are a variety, a large number of family members who are here to give their moral support to the nominees this morning.

If we might, let us ask those individuals to rise from the audience and we will at least acknowledge them, any of the family members of the six nominees.

Thank you very much.

Ladies and gentlemen, there being no further business to come before the Committee, we do declare this session of the Committee adjourned.

Thank you very much.

[Whereupon, at 10:21 a.m., the hearing was adjourned subject to the call of the Chair.]

APPENDIX

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   Kathleen Day Koch, formerly Kathleen Margaret Day

2. Position to which nominated:

   General Counsel, Federal Labor Relations Authority

3. Date of nomination:

   July 11, 1989

4. Address: (List current place of residence and office addresses.)

   Residence -- 3813 Forest Grove Drive
   Annandale, Virginia 22003

   Office -- Federal Labor Relations Authority
   500 C Street, SW., Suite 326
   Washington, D.C. 20424

5. Date and place of birth:

   November 27, 1948
   St. Louis, Missouri

6. Marital status: (Include maiden name of wife or husband's name.)

   Divorced
   Married 1969 - 1986 to Michael E. Koch

7. Names and ages of children:

Stefan A. Koch	age 16
Martha K. Koch	age 12
Rebecca L. Koch	age 10

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

University of Chicago	1974-1977	J.D. 1977
University of Missouri St. Louis	1969-1971	B.S. 1971
Concordia College River Forest, Illinois	1966-1969	--
Lutheran High School South St. Louis, Missouri	1962-1966	Diploma

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

1988 - present	General Counsel, Federal Labor Relations Authority
1987 - 1988	Associate Counsel to the President, The White House
1984 - 1987	Senior Attorney, Personnel Law Division, Office of General Counsel, U.S. Department of Commerce
1979 - 1984	Attorney, United States Merit Systems Protection Board
1977 - 1979	Attorney, United States Department of Housing and Urban Development
1975 - 1977	Part-time legal editor, American Society of Planning Officials (Chicago, IL - while in law school)
Summer 1976	Full-time legal intern, Mandel Legal Aid Clinic, Chicago, IL
1972 - 1973	Part-time admitting clerk, Lutheran Medical Center, St. Louis, Missouri
1971 - 1972	Child care worker, Sieveking Kinderheim, Volksdorf (Hamburg) W. Germany (Employment during husband's studies)

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

All government experience listed above.

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None

12. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Member, D.C. and Illinois Bar
D.C. Bar Association
Federal Circuit Bar Association
Officer, Little River Soccer Club (Youth soccer volunteer)

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

No party office
No public office candicacy

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member - Republican Party of Virginia: no services rendered

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

No contributions of $50 or more

14. Honors and awards: List all scholarships, fellowships, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Finalist 1971, Danforth Urban Leadership Fellowship (St. Louis)
B.S. 1971, Magna cum laude
1974 to 1977, Partial Tuition Scholarship, University of Chicago Law School

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

No published writings

16. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Attached is an outline of remarks delivered June 1, 1989 at the IIT Kent College of Law, Chicago, IL

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I have been serving as General Counsel of the Federal Labor Relations Authority (FLRA) since my appointment on December 22, 1988, during a Congressional recess. My entire legal career has been in public service, where I have developed expertise in federal employee, government ethics and general administrative legal issues.

Immediately prior to coming to the FLRA, I served as Associate Counsel to the President. In that position, I advised the President and senior White House staff on matters related to the Presidential appointment process, legislation, executive orders and policy initiatives. During the Presidential appointment process, I reviewed submissions of appointees to the highest levels in all facets of the Executive Branch. I advised these officials on the financial disclosure requirements and worked directly with them to coordinate their compliance with ethics requirements of their agencies and the Office of Government Ethics. Before I came to the White House Counsel's office, I had worked for 10 years as an attorney in federal agencies with increasing levels of responsibility, with particular expertise in the legal aspects of the entire administrative agency structure in which the federal personnel system functions. In performing my functions, I had to exhibit the utmost tact and sensitivity to individuals while accomplishing policy goals and fulfilling statutory mandates.

My work was utilized and evaluated by some of the most senior members of the Reagan-Bush White House staff. I have been recognized for having an in-depth knowledge of both the federal personnel system and the total administrative structure of the Executive Branch over which the FLRA has jurisdiction. I believe that President Bush has selected me for the position of General Counsel because of my skills and experience and his belief that I also possess the personal commitment necessary to lead an office charged with working toward overall efficient and effective government.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe it is particularly significant that I have extensive experience in government service. In the course of my career, I have developed a broad expertise in federal labor and management issues, administrative and court adjudication of employee/management disputes, and other administrative law requirements. Prior to my appointment as Associate Counsel to the President, where I gained exposure

and understanding of the broad range of tasks performed by all parts of the Executive Branch, I served as Senior Attorney, Personnel Law Division at the Department of Commerce. Shortly after the passage of the Civil Service Reform Act of 1978, I was recruited to become a member of the General Counsel's staff at the United States Merit Systems Protection Board. I remained there for 5 years and during those formative years participated in the development of the agency's body of procedural and substantive legal precedents. The same 1978 legislation codified the labor/management rights and requirements within the federal sector, over which the FLRA has authority. I began my government career in 1977 when I accepted an appointment as an Honors Program Attorney at the Department of Housing and Urban Development. I believe that my broad employment experiences, coupled with my personal integrity and motivational skills, equip me to fulfill the requirements of the position of General Counsel of the Federal Labor Relations Authority.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Present employer is United States Government. No other business connection exists

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   No arrangements or agreements of this nature exist.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   No financial assets, liabilities or other relationships exist which conflict with my service in this position.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   No relationships, dealings or transactions exist or have existed which could constitute or result in a conflict of interest with this position.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   I have had no involvement in any activity related to legislation or public policy except in the course of my assignments as a government employee.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

   Although there appear to be no present conflicts, should any potential conflict of interest arise during my service as the General Counsel, if confirmed, I will immediately point them out to the Designated Agency Ethics Official. I will abide by that official's advice in resolving the conflicts issue, in compliance with all applicable rules, regulations and guidance from the Office of Government Ethics.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I know of no other information which I feel should be considered in connection with this nomination.

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
500 C STREET SW. • WASHINGTON, D.C. 20424

OFFICE OF THE GENERAL COUNSEL

September 15, 1989

The Honorable John Glenn
Chairman
United States Senate Committee
on Governmental Affairs
Room SD-340
Washington, D.C. 20510-6250

Dear Senator Glenn:

It is my pleasure to submit for the consideration of your Committee my responses to the pre-hearing questions relating to my pending nomination. I am available to respond to any additional questions you or other Committee members may have.

Brian Dettelbach of your staff has been most gracious in handling all of my questions regarding the process. I look forward to an early completion of the confirmation and to proceeding with my work at the Federal Labor Relations Authority with continuing enthusiasm.

Sincerely,

Kathleen Day Koch
General Counsel

Enclosures

(202) 382-0742 (FTS) 382-0742 FAX NO. (202) 382-0957 FAX FTS: 382-0957

PRE-HEARING QUESTIONS
KATHLEEN DAY KOCH

A. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as General Counsel of the Federal Labor Relations Authority?

I believe the President nominated me to serve as General Counsel of the Federal Labor Relations Authority because of the experience and expertise that I gained through a legal career spent entirely in public service. In the course of that public service, I have developed an expertise in federal employment and government ethics issues. Prior to joining the White House staff, I served as a senior attorney in the personnel law division at the Commerce Department. In addition, during the significant formative period of the Merit Systems Protection Board, I participated in the development of that adjudicatory agency's procedural and substantive precedent. I bring to the position of General Counsel of the Federal Labor Relations Authority a sensitivity to the needs of Federal employees that comes from being a Federal employee. I am also acutely aware of the need to ensure constructive relations between management and employees which will promote the efficiency of the Federal government.

2. Were there any conditions, expressed or implied, attached to your nomination?

There were no conditions, expressed or implied, attached to my nomination.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as General Counsel of the FLRA? If so, please describe these commitments.

I have made no commitments with respect to the philosophies and policies that I will seek to implement as General Counsel of the FLRA. The only commitment I have made is to myself and to the staff at the Authority to foster peaceful resolutions of labor and employment disputes.

4. Is there any issue currently under consideration by the Federal Labor Relations Authority from which you may have to disqualify yourself? If so, please explain.

There is currently no issue under consideration by the Federal Labor Relations Authority from which I would have to disqualify myself.

B. ROLE AND RESPONSIBILITIES OF THE FLRA GENERAL COUNSEL

1. What do you consider to be the mission of the FLRA?

I believe the mission of the Federal Labor Relations Authority is to provide leadership in establishing the policies and providing guidance which promotes the public interest through collective-bargaining on one hand, and in preserving an effective and efficient government on the other.

2. What do you believe to be your basic role and responsibilities as General Counsel to the FLRA?

In my view, the General Counsel has several major responsibilities. As General Counsel, I have the statutory responsibility to investigate unfair labor practice charges and to settle or litigate those charges which are meritorious. I also have responsibility as General Counsel to establish policy and procedures for processing unfair labor practice charges in a timely and thorough manner. Under the Statute, the General Counsel is vested with final authority over the issuance of complaints. I also have direct authority over and responsibility for management of the Office of the General Counsel and the employees within the headquarters of the General Counsel and the regional offices. Although not specifically required by the Statute, I believe that in providing leadership I have a responsibility for maintaining the continued dialogue with our parties through public appearances, training seminars, and other outreach activities to minimize formal proceedings and encourage informal resolution of disputes.

3. What do you consider to be the major challenges facing the FLRA and how do you propose to address them?

I believe a major challenge facing the Office of the General Counsel is the need to continue to process cases expeditiously during times of extreme budgetary restraints. Timely consideration of cases is one of the critical elements in fostering open communications and more efficient dispute resolution. Case intake has increased dramatically in the past few years. In the same period, the Agency has faced cuts in personnel ceiling allocations and in its overall

budget. In the eight months that I have been in the Office of the General Counsel, it has become readily apparent that the Office's resources have been stretched to the limit. In addition, appropriate support for the staff had been lacking. For example, despite having to increase the number of cases per authorized position by approximately 50 percent over the past five years, the Agency has had to work with word processing equipment and other office equipment which by all standards must be considered technologically antiquated and physically dilapidated. I have in this past fiscal year, initiated a plan to bring state-of-the-art technology into the Agency. As a first stage of that, I have purchased personal computers to replace all existing word processing equipment. It is my hope to be able to complete my plan and provide personal computers to all professionals in the Office of the General Counsel within the near future. In addition, I hope to be able to implement a thoroughly computerized case-tracking system by which to more effectively monitor our caseload and measure our performance.

Recently, the difficulties in making do with our limited resources was brought home to me in another way by the Court of Appeals for the District of Columbia Circuit. In its decision in the case of Sacramento Air Logistics Center v. Federal Labor Relations Authority, the Court held that the Office of the General Counsel will have to bear the expense of travel and per diem of Federal employees of other agencies who appear in proceedings on behalf of the FLRA. This was a cost which was always borne by the government but spread among the many federal agencies appearing in our proceedings as respondents. However, because of the Court's decision, the totality of this expense will now be the liability of the Office of the General Counsel.

In an effort to minimize the effect of the budget restraints, I am also reviewing the regional offices' and headquarter's organizational structures to try to determine how we can do more with fewer personnel. I have already taken steps in the headquarters of the Office of the General Counsel to consolidate several functions and realign the operations. I intend to conduct a review of case processing operations to determine whether any procedures can be amended, streamlined or eliminated while maintaining the formality and integrity of the processes.

4. What objectives would you like to achieve as General Counsel to the FLRA?

Ultimately, the federal labor-management relations program should exist to create an environment which serves the public

by increasing government efficiency and effectiveness. To assist in accomplishing this, it is one of my goals that all members of the labor-management community have the confidence that matters brought to our attention will receive fair and equitable consideration no matter which office receives the initial communication. I would also like to continue and expand on the outreach programs both from my office and from th regional offices. These programs include regular meetings with representatives of all sectors of the labor-management community to discuss issues that affect their relationships to each other and to our case processing. In addition, many regions conduct training seminars and workshops for representatives of both parties. We find that these training programs help minimize the filing of frivolous charges and promote settlements of the meritorious ones. In this way we effectuate the purpose of the statute by emphasizing problem resolution and not merely case disposition in all of our contacts with the labor-management relations community. In addition to bringing state-of-the-art technology into the agency as described above, I intend to continue to look for imaginative and innovative techniques to continue to serve our clientele in an expeditious manner during the times of severe budgetary constraints.

5. How do you see your relationship and the nature of your duties as they relate to:

(a) the Office of Personnel Management,

(b) the Merit Systems Protection Board, and

(c) the Office of Special Counsel?

The Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, and the Federal Labor Relations Authority, all creatures of the Civil Service Reform Act of 1978, share a common goal of promoting an efficient and effective government through employment rules and practices based on principles of merit. OPM serves as the Government's chief personnel office which administers personnel programs affecting all aspects of federal employment. The MSPB and the FLRA are neutral adjudicatory agencies which were established to resolve disputes and conflicts between management, employees and the employees' elected representatives for collective bargaining. In this regard, the relationship of FLRA and the MSPB with OPM must necessarily be circumspect in order to maintain their impartiality. As General Counsel, I most share a kinship with the Special Counsel. Like the Special Counsel, my role is to investigate

and, if necessary, prosecute cases to ensure that the statutory purposes of the Civil Service Reform Act are met.

In this regard, I believe it would be advantageous for me as General Counsel to engage in dialogue with the Special Counsel concerning our common goals and our procedures. For example, I recently asked my staff to review our own procedures and the circumstances in which we would utilize investigative subpoenas to obtain necessary information. I believe the subject concerning use of investigative subpoenas is a matter which could be explored jointly with the Special Counsel. In addition, the Office of the General Counsel has often wrestled with the question of how much of the information gathered in the course of an investigation should be revealed to respondents in order to resolve or facilitate the resolution of disputes. This, I'm certain, is a matter in which the Office of Special Counsel would have a similar interest.

C. FEDERAL LABOR RELATIONS AUTHORITY MANAGEMENT

1. In addition to your statutory responsibilities, how can you enhance and promote effective labor-management relations in government and reduce the likelihood of disputes between these parties?

As I stated in response to questions above, I believe that as General Counsel, I can enhance and promote effective labor-management relations in the government and reduce the likelihood of disputes between parties by regularly engaging in a dialogue with the parties. This dialogue would take place in many fashions. I have been and will continue to be available to meet with federal managers and union officials and to engage in dialogue with them at conferences and conventions. In addition, my staff, particularly the Regional Directors, are prepared to present training seminars on effective utilization of peaceful techniques for resolving disputes as well as keeping the parties abreast of current status of the law of labor-management relations. Finally, I encourage our investigators to utilize the opportunities they have while on-site at the Federal activities to assist the parties in resolving their conflicts amicably through settlement.

2. What actions will you take to ensure consistency between the decisions rendered by the FLRA and those of the Merit Systems Protection Board or the Office of Special Counsel in areas, such

as unfair labor practices or discrimination, which may involve overlapping jurisdiction?

Situations may occur where there is some overlapping of jurisdiction between the FLRA, the MSPB and the Office of Special Counsel. I will continue to designate a senior staff member as a liaison to the Civil Service Reform Act agencies. I will continue to have open lines of communication with my counterparts at the Board and the Office of Special Counsel. We currently have positive working relationships with both of these agencies and I will continue to maintain the historical respect between the Authority, the MSPB, and the Special Counsel's office.

3. Do you believe that labor-management relations in the federal government should reflect, as closely as possible, the practice and precedents of those in the private sector? What do you see as the similarities and differences between the two?

The legislative history of the Statute is clear that the FLRA was modeled after the National Labor Relations Board. Congress was guided by private sector experience as well as experience under Executive Order 11491 as amended, in drafting the Statute. The functions, organization and procedures of the Authority closely resemble those of the NLRB, but the substance of the Statute is quite different from the National Labor Relations Act in several respects.

Congress clearly recognized the important differences between labor-management relations in the public sector and labor-management relations in the private sector. The legislative history of the Federal Labor-Management Relations Statute reveals that the substantive provisions in the Statute have their own distinctive origin and purpose. In addition, the Statute contains substantive provisions not seen in the NLRA such as definitions of conditions of employment; negotiation of an official time provision; a management rights clause; and prohibitions against strikes, work stoppages, or slowdowns.

Precedent of the NLRB and the Circuit Courts of course, will be helpful in making my determinations. However, the Federal Service Labor-Management Relations Statute must stand upon its own language and legislative history.

Procedures in operating techniques utilized by the NLRB's General Counsel's office in processing unfair labor practice charges and representation petitions have been, and will continue to be, helpful in formulating policies. However, my

policy determinations will be based on how the purpose of the Federal Labor-Management Relations Statute can be best effectuated by my office.

4. The General Counsel, as you know, unlike the Members themselves, serves at the pleasure of the President. Further, the duties are prosecutorial rather than adjudicatory.

(a) What do you think is the proper relationship between the General Counsel and FLRA itself?

(b) What degree of independence should the General Counsel have from other Members of the Authority?

I believe the General Counsel must maintain complete independence in fulfilling the statutory responsibilities to investigate and prosecute unfair labor practices. In these substantive matters, the General Counsel must maintain an arm's length relationship with the Authority--similar to prosecutor and adjudicator in the Court system.

The Authority exercises primary responsibility for administrative and budgetary matters involving the Office of the General Counsel. Curiously, this is a departure from the model of the NLRB, discussed above. At the NLRB, the General Counsel has responsibility for the budgetary and administrative matters of the Agency. In my view, given that the distinct roles of OGC and the Authority demand an arms length relationship, neither the FLRA nor NLRB model for budgetary and administrative control is ideal. Another model which merits review is the independence in such matters given the Office of Special Counsel. Even before this year when the Special Counsel was established as an independent agency, the Special Counsel had separate budget authority and separate administrative authority from that of the MSPB.

I am well aware that tensions between former Members of the Authority and former General Counsels arising from these budgetary and administrative controls have sometimes resulted in public disagreements. Because, under the current statutory scheme, the prosecutor remains administratively dependent on the adjudicator, occasional tensions of this nature can be anticipated. I will continue to attempt to resolve in a professional and responsible manner any differences of opinion between the Authority Members and myself concerning administrative and budgetary decisions which impact directly upon the Office of the General Counsel. It will be my goal to work with the Authority, if possible, to avoid interference with the General Counsel's statutory responsibilities due to exercise of budgetary and administrative control.

5. Section 7123(d) of the Federal Service Labor-Management Relations Statute gives the Authority power to provide appropriate relief, including temporary restraining orders, to temporarily enjoin unfair labor practices.

   (a) How do you envision employing this section to carry out your statutory duties?

   (b) In what kinds of cases or situations would you feel it most appropriate to petition the Authority for the relief afforded under Section 7123(d)?

   Under current Authority procedures, temporary relief is an extraordinary remedy which must take the form of a restraining order granted by the Courts. It is not easily available. As it is currently structured, the procedure is also cumbersome. The General Counsel must seek permission of the Authority to go to the Court to seek injunction. Some commentators have suggested that it might be more efficient if the Authority could authorize stays similar to the MSPB procedures. The Merit Systems Protection Board may grant a stay upon request of the Office of the Special Counsel in appropriate and critical situations. This is a suggestion which merits study.

   Under the current Statute, I will seek Authority approval to request temporary relief from an appropriate U.S. District Court Judge in cases where maintenance of the status quo is vital. In particular, I will carefully consider all requests to seek appropriate temporary relief in cases where the unfair labor practice has rendered any other remedy meaningless. Examples could include reorganizations which require employees to move to a new location without first fulfilling the statutory bargaining obligation, and unlawful strikes, picketing and slowdowns which interfere with the ability of the Government to perform its mission.

6. Some analysts have questioned both the adequacy and specificity of FLRA remedies issued over the years in unfair labor practice cases.

   (a) How do you respond to this assertion?

   (b) In which types of cases and under what circumstances would you consider it appropriate to order status quo ante relief?

   (c) In which types of cases and under what circumstances would you consider it appropriate to seek a "retroactive bargaining order"?

I firmly believe that the General Counsel should seek meaningful remedies to unfair labor practice violations. Remedies ordered in unfair labor practice cases, however, are controlled by the Authority Members. I intend to propose meaningful remedies in all unfair labor practice cases which reach the Authority for decision. I also intend to settle meritorious unfair labor practice charges in the Regional Offices with remedies which are substantially similar to those which would be ordered by the Authority if the case was successfully litigated. It should be noted, however, that the remedy provisions of the Statute basically track the remedies offered by the National Railway Act and the National Labor Relations Act.

I would consider it appropriate to seek status quo ante relief in those situations where that would be the only remedy which will make the affected party(ies) whole for significant violations of the Act. I will continue to seek status quo ante relief in cases where individual employees have been discriminated against because of their protected statutory activities.

I will closely examine impact and implementation bargaining cases to determine if a retroactive bargaining order is necessary to remedy the implementation of a nonnegotiable management right without first negotiating its impact on adversely affected employees and implementation procedures. I intend to emphasize in outreach programs with the clientele, as well as in training of General Counsel employees, that remedies play a significant role in performing our statutory function.

7. What factors will be most important for you in determining whether to prosecute cases in (a) areas that have not yet been fully considered by the Authority, and (b) areas that have been decided in previous years under a different composition of the Authority and which you believe are flawed?

The General Counsel is vested with final authority over the issuance of complaints under the Statute. The General Counsel thus plays a key role in the development of the law under the Statute. The General Counsel's approach in determining whether to issue a complaint in a particular set of circumstances can influence greatly the direction that development will take. I will authorize issuance of complaint, absent settlement, in those cases where the law is unclear and there is a probability that an unfair labor practice has occurred. It is through cases such as this that the

Authority has the opportunity to apply its expertise to the interpretation of the Statute. By obtaining Authority decisions in areas which may be unclear, the labor-management relations community can be provided with guidance for their future interactions.

It is necessary that the parties in this program can look to Authority decisions to instruct them as to their definitive rights and responsibilities under the Statute. Uncertainty in the law leads to disputes, unfair labor practice charges, and formal litigation. There are situations, however, where existing precedent is based on a premise which no longer continues to be valid. There are also occasional circumstances where the Authority has established precedents which can be viewed to conflict. In both of those situations, I will closely examine the basis for previous decisions and determine whether circumstances have changed or other underlying policies should be altered. I do not intend to contest issues which have been settled by the Authority and the Courts and accepted by the parties. However, I will carefully examine situations where the Authority and the Courts have been in disagreement. A careful balancing between stability in the program and development of the law is required.

8. In cases involving exceptions to arbitration awards, the FLRA can issue an order denying the exceptions. If the losing party subsequently refuses to comply with the arbitration award, the Authority has required the winner of the award to file an unfair labor practice which the FLRA General Counsel must prosecute. At that point, the Authority may then petition for enforcement.

Some have recommended this process can be streamlined if the Authority were to petition the Courts directly for enforcement of such an award rather than awaiting an action by the General Counsel. What are your views?

Since the passage of the Statute in 1978, there have been recommendations to amend portions of the Statute to fix perceived difficulties. This question pertains to one specific substantive area--enforcement of arbitration awards. The failure to comply with an arbitration award to which no exceptions have been filed, or where exceptions were denied, is an unfair labor practice. The Regional Offices strive to obtain stipulations of fact directly to the Authority in these cases. The General Counsel serves only as a conduit to

determine whether the award, in fact, has been effectuated. We do not reexamine the legality or correctness of the award. This procedure is peculiar to the federal sector program. I am not prepared at this time to suggest legislative fixes to the Statute, if any. However, I will carefully listen to and review all suggestions which will allow me to better perform the statutory responsibilities entrusted to the General Counsel by the Statute.

D. THE CIVIL SERVICE REFORM ACT

1. What do you feel are the most important principles of the Civil Service Reform Act?

The most important principle of the Civil Service Reform Act is, undoubtedly, the principle that Federal employment should be based solely on the individual's merit. This concept of merit includes such factors as education, experience, and achievements. The rest of the Act, I believe, contains provisions which are intended to support that principle. Thus, we have the full panoply of due process rights to protect employees against arbitrary and indiscriminate actions.

Title VII of the Civil Service Reform Act, the Federal Service Labor-Management Relations Statute, is not inconsistent with that principle of merit. That statute endorses the concept that employees ought to be able to organize for the purpose of bargaining over the terms and conditions of their employment and should not be treated in any retaliatory or discriminatory way for exercising that right. To the extent that it promotes peaceful resolution of disputes occurring in the workplace, it promotes and supports that principle of merit and efficiency in the Federal service.

2. How would you describe the level of protection which the Civil Service Reform Act provides to federal employees?

On the whole, I believe the Civil Service Reform Act has provided adequate protections against arbitrary or indiscriminate actions against Federal employees. I am certain, however, that there are areas in which improvements can be made. To some extent, through numerous adjudicatory agencies such as EEOC, MSPB and the FLRA and through collective-bargaining agreement dispute resolution

procedures, Federal employees have very adequate sources for redress. At times, the very number of avenues for administrative review creates some confusion. We ought to be looking toward decreasing the level of confusion in Federal workplace problem resolution in the years to come.

It is my experience as a Federal employee and manager that the overwhelming majority of public servants at all levels are committed to providing the American people with protection, security and service in the most effective manner possible. During my tenure as General Counsel I hope to preside in a period of time in which both management and unions learn to work in a spirit of cooperation befitting allies in that common enterprise, and where the parties feel less compelled to resort to litigation to obtain their objectives.

3. Do you see any particular change(s) in the Act needed to help clarify and carry out the goals of this legislation?

After only eight months as General Counsel I am not prepared to recommend specific changes in the law at this time. I do recognize, however, that after almost 11 years under the Civil Service Reform Act, areas of the Act may need to be clarified and that an overall review of our experience under the Act may be warranted. For example, as a result of my prior experience with the Merit Systems Protection Board, I am well aware of the complexities and the difficulties in resolving what are known as "mixed cases." I alluded to other changes in answers to other questions. For example, I suggested that it may be beneficial to explore the possibility of providing the Authority with the power like that of MSPB to issue stays. It also may be constructive to consider granting the General Counsel greater independence in the budgetary and administrative process similar to that which was given to the Office of Special Counsel.

E. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

Yes.

Submitted to the United States
Senate Committee on Governmental Affairs
on this 15th day of September, 1989.

Kathleen Day Koch

24-756 - 90 - 2

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Margaret Jean McKee (Margaret does not appear on birth certificate, but does on christening records at St. Peter's Church, Main St., Cheshire, CT. 06410)

2. **Position to which nominated:**

   Member, Federal Labor Relations Authority

3. **Date of nomination:**

4. **Address:** (List current place of residence and office addresses.)

   Res.: 3001 Veazey Terrace, N.W.
   Washington, D.C. 20008
   Off.: 500 C Street, S.W.
   Washington, D.C. 20424

5. **Date and place of birth:**

   June 20, 1929; New Haven, CT.

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Single

7. **Names and ages of children:**

   Not applicable

8. **Education:** List of secondary and higher education institutions, dates attended, degree received and date degree granted.

Packer Collegiate Institute - 1933-47
170 Joralemon St., Brooklyn, N.Y.

Vassar College - 1947-51, B.A. 1951
Poughkeepsie, N.Y.

New York University - 1978
Division of Career & Professional Development Seminars
New York, N.Y.

University of Southern California - 1979 (Certificate)
Graduate School of Business
Winter Executive Program
Los Angeles, California

American University - 1982 - Seminars
Washington, D.C.

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

3/86 to present, Member, Federal Labor Relations Authority, 500 C St., S.W., Washington, D.C.

3/83-3/86, Executive Director, Federal Mediation & Conciliation Service, 2100 K St., N.W., Washington, D.C.

11/80-2/83, Director of Government Relations, General Mills Restaurant Group, Inc., 1200 New Hampshire Ave., N.W., Washington, D.C.

3/80-11/80, Public Affairs Consultant, 785 Park Avenue, New York, N.Y.

1/80-3/80, Pre-Campaign direction, John L. Loeb, Jr., White Plains, New York, and 375 Park Avenue, New York, N.Y.

1/79-1/80, Public Affairs Consultant, 785 Park Avenue, New York, N.Y., and 532 South Brooksvale Road, Cheshire, CT.

9/78-1/79, Chief of Staff, Minority Leader, New York State Assembly, 270 Broadway, New York, N.Y.

6/78-9/78, Operations Director, Duryea for Governor, 8 West 40th St., and 30 E. 42nd St., New York, N.Y.

2/78-6/78, Chief of Staff, Minority Leader, New York State Assembly, 270 Broadway, New York, N.Y.

3/76-6/77, Deputy Administrator & Acting Administrator, American Revolution Bicentennial Administration, 2401 E St., N.W., Washington, D.C.

11/72-9/75, Administrative Assistant, Office of Senator Jacob K. Javits, Russell Senate Office Building, Washington, D.C.

8/72-11/72, Director of Scheduling & Speakers, New York Committee to Re-Elect the President, Hotel Roosevelt, Madison Avenue & 45th St., New York, N.Y.

11/70-10/72, Special Assistant, Office of Senator Jacob K. Javits, 326 Old Senate Office Building, Washington, D.C.

9/70-11/70, Director of Scheduling, Goodell for Senate Campaign Committee, 575 Madison Avenue, New York, N.Y.

2/69-8/70, Special Assistant, Office of Senator Jacob K. Javits, 320 Old Senate Office Building, Washington, D.C.

11/68-2/69, Special Assistant, Office of Senator Jacob K. Javits, 110 East 45th St., New York, N.Y.

5/68-11/68, Deputy Campaign Manager, Javits for Senator Campaign, Committee, Hotel Roosevelt, 45th St. & Madison Avenue, New York, N.Y.

3/67-11/68, Special Assistant, Office of Senator Jacob K. Javits, 110 East 45th St., New York, N.Y.

6/66-11/66, Director of Scheduling, Republican State Campaign Committee, New York Hilton, Avenue of Americas at 53rd St., New York, N.Y.

2/66-6/66, Director of Scheduling, New York Republic State Committee, 120 E. 56th St., New York, N.Y. - Office located at 22 West 55th St., New York, N.Y.

11/65-2/66, Partner & Treasurer, Consensus, Inc., 30 E. 42nd St., New York, N.Y.

9/65-11/65, Assistant Campaign Manager, Kenneth B. Keating for Judge of the Court of Appeals (NY State), Hotel Biltmore, 43rd St. & Madison Ave., New York, N.Y.

11/64-9/65, Partner & Treasurer, Consensus, Inc., 30 E. 42nd St., New York, N.Y.

8/64-11/64, Co-Director, New York State Republican Campaign Committee, 521 Fifth Avenue, New York, N.Y.

2/64-7/64, Co-Chairman, Special Assistants, Rockefeller National Campaign Committee, 521 Fifth Avenue, New York, N.Y.

1/62-2/64, Partner & Treasurer, Consensus, Inc., 44 E. 80th St., New York, N.Y.

10/61-11/61, Special Assistant, Republican City Campaign Committee, Hotel Commodore, Lexington Ave. & 42nd St., New York, N.Y.

10/61-10/61, Special Assistant, Finance Committee for Lefkowitz, Rockefeller Center, New York, N.Y.

7/61-10/61, Special Assistant, United Citizens for Lefkowitz (for Mayor), Belmont-Plaza Hotel, Lexington Ave. at 49th St., New York, N.Y.

2/61-3/61, Assistant to political columnist Raymond Moley, Newsweek Magazine, 444 Madison Avenue, New York, N.Y.

9/60-12/60, Executive Secretary, New York State Independent Citizens for Nixon-Lodge, 277 Park Ave., New York, N.Y.

11/59-8/60, Executive Secretary, New Yorkers for Nixon, 555 Madison Ave., New York, N.Y.

11/57-11/59, Researcher, Stricker & Henning Research Associates, 24 West 58th St., New York, N.Y.

9/55-11/57, Staff Assistant, Crusade for Freedom, 345 East 45th St., New York, N.Y.

2/53-9/55, Staff Assistant, New York Republican State Committee, 41 East 42nd St., New York, N.Y.

4/52-11/52, Staff Assistant, United Republican Finance Committee, 270 Park Avenue, New York, N.Y.

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

1986, Member, Clerical Recruitment Task Force, United States Information Agency

1985, Member, Management Review Task Force, Consumer Product Safety Commission

1982-date, Member, Private Sector Public Relations Advisory Committee, United States Information Agency

7/79-7/82, Commissioner, Advisory Commission on Public Diplomacy, 400 C St., N.W., Washington, D.C.

5/65-5/72, Commissioner, New York State Bingo Control Commission, 162 Washington Ave., Albany, N.Y.

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation company, firm, partnership, or other business enterprise, educational or other institution.

12/79-8/86, Member of Board of Directors, Intramerica Life Insurance Company, P.O. Box 1722, 1 Blue Hills Plaza, Pearl River, N.Y.

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Washington, D.C. Vassar Club - 1969-to date
Brooklyn Orphan Asylum Junior Committee - 1951-c.1958, Board Member
Heights Casino, Brooklyn, N.Y. - 1951-c.1959
Junior League of Brooklyn - 1952-c.68, Board Member
Brooklyn Home for Children - 1953-c.1957, Junior Board
Friends of Central & Prospect Park, Brooklyn N.Y. - c.1960-1980
National Trust for Historic Preservation and Historic House Association - 1970's-c.1982 & 1985-to date
Smithsonian Institution - c.1969-to date
Executive Women in Government - 1975-to date, Vice Chairman, Chairman
National Women's Education Fund - 1975-1982, Board Member
Friends of Kennedy Center - c.1970-to date

National Archives - c.1975-1980
Forest Hills Citizens Association, Inc. - c.1970-1980
American Automobile Association - c.1972-to date
American News Women's Club - 1976-1987
Society of Descendents of Colonial Clergy - 1976-c.1980
National Society of Colonial Dames in the State of New York - 1976 to date
Sons & Daughters of the Pilgrims - 1976-to date
National Association of Female Executives - 1978-1980
Heights-Slope Young Republican Club - 1955-c.1965
New York Young Women's Republican Club - 1953-c.1967
National Women's Republican Club - 1953-c.1965
Capitol Hill Women's Republican Club, c.1971-77
Republican Women's Federal Forum - c.1975-83
D.C. League of Republican Women - 1983-87
Women in Government Relations - 1981-1983
Small Agency Council - 1984-1986, Executive Committee
AMIG Steering Committee of the Administrative Conference of the U.S. - 1984-1986
Society of Federal Labor Relations Professionals - 1986 to date
Industrial Relations Research Assoc., 1986 to date
The Connecticut Society of Washington, 1989 to date

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Following were all New York:
Young Republicans: Pres., Heights-Slope Y.R. Club, 1955-56; Board Member, Young Women's Republican Club of N.Y., various years 1953-66.
State Young Republican Association: Vice Chairman 1955-57, Chairman 1957-58, 2nd Judicial District; Vice Chairman Board of Governors 1958-60; Vice President 1960-62, President 1962-64.
Federation of Women's Republican Clubs: Executive Committee Member 1960-64; Council Member 1964-70.
Republican State Committee: Executive Committee Member, 1962-64.
Alternate Delegate-at-Large, 1964 Republican National Convention.
Committee to Fill Vacancies, 1966 Gubernatorial election.
National Young Republicans: Secretary, Mid-Atlantic Council c.1954; Committee Vice Chairman c.1961-63.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

1982 Fundraising for Congressional candidates: Orrin Hatch, Hamilton Fish, Frank Horton, Sherwood Boehlert
1980 Director of Planning, Strategy and Women's Programs, Connecticut Reagan-Bush Campaign
1978 Duryea for Governor (see #9 above)

Note: All others for (a) and (b) listed in #9 above.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

1988: GOPAL, $50
Rowland Congress Committee, $50
Friends of Connie Morella for Congress, $50
Presidential Trust, $1000
Committee for Roy Goodman, $75
Victory '88, D.C. Republican Committee, $50
Committee to Elect Philip S. Robertson, $50

1987: Women's Campaign Fund, $50
New York Republican State Committee, $100
Kilberg for State Senate, $100

1986: DeNardis Committee, $50
GOP Women's PAL, $50
Friends of Connie Morella for Congress, $50
Committee for Roy Goodman, $50
Carol Schwartz for Mayer, $50
Rowland for Congress Committee, $50

1985: Committee to Re-Elect Joy Hostage, $50
New York Republican State Committee, $100

1984: Committee for Roy Goodman, $100
Committee to Re-Elect Bill Green, $100
New York Republican State Committee, $100

1982: Friends of Sherwood Boehlert, $150
Catherine Bertini for Congress, $50
Bruce Chapman for Governor, $50

1978: Assembly Campaign Committee (NY), $50
John Warner for Senate, $50

Committee for Goodman, $50
N.Y. Republican State Committee
Dinner, $150
Duryea for Governor, $125

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

None

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Article: ". . . And Yet So Far: Today's Cuba", The Institute for Socioeconomic Studies, White Plains, N.Y., Summer 1980

16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

See attached.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

Having served effectively for 3 years filling an unexpired term as a Member of the Federal Labor Relations Authority, I have been offered the opportunity to be reappointed.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My 20-year career in Federal Government service brings to the Federal Labor Relations Authority a thorough working knowledge of present and past labor relations precedents and procedures.

For the past 3 years, I have served as a Member of the Federal Labor Relations Authority and since December 13, 1988 as the Acting Chairman. During this time I have reviewed and decided a wide spectrum of

significant and complex issues which have come before the Authority.

At the time of my appointment, the Authority had been criticized for both the quality and timeliness of its decisions. During my tenure both of these problems were overcome.

At all times I have required that the decisions which I approve be based on the issues presented and contain a thorough, complete and understandable analysis. The decisions of the Authority now establish clear precedent, and are written in a format and language which meet legal requirements yet are understandable to the lay person.

The prior Chairman and I established a policy of issuing all decisions within 180 days of filing. As of August 1986 of the 401 cases pending before the Authority, 216 were over 180 days old During the first 18 months of my tenure as a Member, this backlog of cases was eliminated and the Authority achieved its goal. The Authority sustained its objective of issuing decisions within 180 days of filing until November 1, 1988, when the former Chairman's resignation became effective.

Since that time I have been the only Member. I have continued to approve draft decisions from all three Member staffs. These draft decisions await review and approval by a new Member(s).

Throughout my career, I have been involved with labor-management issues and with the administration of government. As both Administrative Assistant and Special Assistant to the late Senator Jacob K. Javits, I was necessarily cognizant of the broad spectrum of labor issues while he served as Ranking Minority Member of the then Labor and Public Welfare Committee.

As Deputy and then Acting Administrator of the American Revolution Bicentennial Administration, I was responsible for the overall operation and personnel of the Agency. As Director of Government Relations for the General Mills Restaurant Group I followed labor-management issues. Most immediately prior to my appointment to the Authority, I served as Executive Director of the Federal Mediation and Conciliation Service and chaired its Arbitrator Review Board.

I look forward to the opportunity to continue and further enhance the progress which the Authority achieved over the last 3 years.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Not applicable.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

None

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None to the best of my knowledge.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

During 1980-83 as Director of Government Relations for the General Mills Restaurant Group, I lobbied on a variety of issues before the Congress and being considered by the Executive branch. I met with federal officials on regulations affecting business. I also cooperated with several trade associations on public issues, most particularly the National Restaurant Association, the Food Service and Lodging Institute, the National Fisheries Institute and the Chamber of Commerce. The broad issues of concern were food, particularly fish, wages, youth differential, Targeted Jobs Tax Credits, taxes on tips, Caribbean Basin Initiative, and the Immigration bill. To the best of my recollection, there were no issues involving federal labor-management relations.

1983 to 1986, at the Federal Mediation and Conciliation Service, I have contributed to preparation of the budget, conferred on legislation referred by the House or Senate Committees, and any revisions of the regulations under which the Arbitrator Review Board operates.

1986 until December 13, 1988, I served as a Member of the Federal Labor Relations Authority. From December 13, 1988, to date I have served as the Acting Chairman of the Federal Labor Relations Authority. As a Member, I participated in the preparation of the Authority's budget for Fiscal Years 1988 and 1989. As Acting Chairman, I testified before the House and Senate Committees on Appropriations in support of the Authority's budget request for Fiscal Year 1990. I have also reviewed Authority responses to various requests from Members of Congress for views on proposed legislation. Most recently, I responded to a request

from Representative William D. Ford for the Authority's views on H.R. 2205, the Law Enforcement National Labor-Management Relations Act.

As a Member of the Authority, I participated with the former Chairman in an effort to amend sections 5314-5316 of title 5 of the U.S. Code to provide remuneration to the Chairman, Members, and General Counsel of the Authority at levels similar to those of Chairmen and Members of comparable agencies. On July 15, 1987, former Chairman Calhoun transmitted a draft bill to that effect to the President of the Senate and the Speaker of the House of Representatives. The legislation was not introduced.

Of course, as a Member of the Authority, I participated in deciding cases submitted to the Authority for adjudication under Title VII of the Civil Service Reform Act of 1978, the Federal Service Labor-Management Relations Statute. These case decisions directly affect the administration and enforcement of the Statute.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

None to my knowledge.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. Have you ever been investigated, arrested, charged or held by an Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

As Executor of my Mother's Estate and beneficiary of my Uncle's estate, there is still pending a civil action in Superior Court, Judicial District of New Haven, revised complaint Document #CV-84-0224670S brought originally December 12, 1983 and revised November 11, 1985 by William & Elaine Hume vs Town of Cheshire et al. There are seven counts, and the seventh count includes Gordon C. Thayer, Thornton C. Thayer and Elizabeth McKee. It concerns the damages due to flooding of Hume property during Spring flood.

A significant number of the decisions of the Federal Labor Relations Authority are subject to litigation in the United States Courts of Appeals and the Supreme Court. As a Member of the Authority I could be considered a party to or interested person in these proceedings. On a relatively few occasions, I have been named as a defendant in litigation in the United States District Courts in my official capacity as a Member or Acting Chairman of the Authority. I have not been named as a defendant in my personal capacity in these proceedings which seek to challenge actions or inactions of the Authority.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None to my knowledge

PRE-HEARING QUESTIONS

JEAN MCKEE

A. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority?

Combining my 20-year career in the Federal Government with the past 3 years as a Member of the Federal Labor Relations Authority, I bring to this position a thorough working knowledge of present and past labor relations precedents and procedures. In addition, during my tenure at the Authority the severe backlog of cases, which existed when I joined the Authority, was eliminated. By February 1988, the goal of issuing all cases within 6 months of receipt was achieved and the goal was sustained until the former Chairman's resignation on November 1, 1988. The format and style of writing for case decisions was revised for clarity and all the issues in each case were carefully analyzed and addressed. I believe this record of accomplishment and the continuity my reappointment provides to the Authority were probably the dominant factors in my nomination.

2. Were there any conditions, expressed or implied, attached to your nomination?

No.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as a Member of the FLRA? If so, please describe these commitments?

I have made no specific commitments other than to publicly state in speeches that I am committed to the issuance of cases within 6 months of receipt. Former Chairman Calhoun and I established and achieved this goal in February 1988. We sustained this processing goal until November 1988, at the time of the Chairman's resignation.

4. Is there any issue currently under consideration by the Federal Labor Relations Authority from which you may have to disqualify yourself? If so, please explain.

No.

B. FLRA MEMBER'S ROLE AND RESPONSIBILITIES

1. What do you consider to be the mission of the FLRA?

The mission of the FLRA is to provide leadership in establishing policies and guidance relating to labor relations under the Federal Service Labor-Management Relations Statute.

2. What do you believe to be your basic role and responsibilities as a Member of the FLRA?

The basic role of a Member of the FLRA is to adjudicate labor-management disputes in the Federal Government as provided under 5 U.S.C. §§ 7101 - 7135. In furtherance of this role, there are two basic responsibilities: to ensure the timely issuance of decisions and to ensure the quality of the decisions. This means setting an overall goal of issuing cases within a specified time frame, such as 6 months from time of receipt. It also requires that the decisions be based on the issues presented in each case and that the analysis be legally correct, thorough, complete and understandable to the parties and the courts.

An additional role and responsibility is to seek opportunities to enhance the total Federal labor-management relations program to achieve the broad objectives set forth in the Statute. Most especially, this applies to facilitating and encouraging the amicable settlements of disputes, rather than time-consuming litigation, which often results in one party "winning" and the other "losing."

3. What do you consider to be the major challenges facing the FLRA and how do you propose to address them?

The first major challenge will be to help the new Members of FLRA assimilate as quickly as possible into the positions which they hold. This will mean providing them with an orientation to the Authority and its various components as well as briefings on issues as necessary.

The overall challenge will be to once again achieve the timely issuance of quality decisions. In assuming a leadership position, I would set the following two goals and urge the cooperation of the other Members in achieving them: (1) issue decisions within 6 months of receipt, and (2) achieve a "current" inventory by January 1, 1991. I will also strive to ensure that all decisions which I approve are based on a thorough and complete analysis of the issues, are legally correct, and are written in a manner which is understandable to the parties and the courts. If additional training is required for employees, whether incumbent or new, to achieve these results, it will be provided.

Once quality decisions are being issued in a timely fashion, I believe the Authority should look at some broad issues to ascertain whether they should be addressed as policy statements. A major challenge for the FLRA is to seek ways to reduce the number of filings by the parties. Issuing broad policy statements may facilitate the amicable settlement of disputes and lessen the need for the parties to litigate issues before the Authority and the courts.

In addition, I believe the FLRA should take a leadership role in improving the relations between the parties through cooperative labor-management relations programs. Considerable thought and planning needs to take place for a successful program in this area. The various allied agencies should be included in any planning and final program. It is a major challenge but one which is appropriate after 10 years of experience with the Statute and the objective which Congress expressed for the amicable settlement of disputes.

4. What objectives would you like to achieve in this term as a Member of the FLRA?

The overall objective will be to meet the challenges as expressed in Question 3. above. This means that the first objective is to eliminate the current backlog and be current by January 1, 1991. This will be followed by issuing decisions within 4 months of receipt for arbitration cases and within 6 months of receipt for all other cases. It also means sustaining the quality of decisions. This effort should include a review of the current procedures for processing cases to look for any methods which would increase the speed of issuing cases.

In addition to continuing to issue timely and quality decisions, the FLRA should assume a leadership role in relation to the total Federal labor-management program with a view toward enhancing the relationships between labor and management. The objective here would be to increase the capability of the parties to amicably settle--rather than litigate--disputes. Although litigation resolves issues, it does little to improve the labor-management relationship and, in addition, frequently exacerbates rather than resolves the parties' real problems.

As a Member, nominated with the designation as Chairman, I would initiate a review of the management functions of the Authority with the objective to ensure that the needs of the agency and its personnel are met. I will also work closely with the newly-hired Inspector General to eliminate any waste, fraud or abuse which may be found, and to enhance the delivery of services in all elements of the Authority in the most cost-effective manner. I would also examine the feasibility of initiating experiments in resolving negotiability disputes through alternative means of dispute resolution rather than litigation, and would attempt to provide agencies and unions with necessary training, through conferences and written materials.

5. How do you see your relationship and the nature of your duties as they relate to:

(A) the Office of Personnel Management

(B) the Merit Systems Protection Board, and

(C) the Office of Special Counsel?

The Federal Labor Relations Authority, the Office of Personnel Management, the Merit Systems Protection Board and the Office of Special Counsel perform distinct functions under the Civil Service Reform Act of 1978.

The Office of Personnel Management (OPM) serves as the chief personnel manager for the Federal Government. Among other things, OPM is responsible for administering examinations to applicants for Federal employment and for issuing regulations which are generally applicable to Federal employment. The Authority is authorized by section 7105(i) of the Federal Service Labor-Management Relations Statute to request advisory opinions from the Director of OPM concerning the interpretation of regulations issued by OPM.

The primary functions of the Merit Systems Protection Board and the Office of Special Counsel, respectively, are to adjudicate appeals of serious disciplinary and adverse actions involving competitive service employees and to investigate alleged prohibited personnel practices. In most cases, an aggrieved employee must elect whether to pursue a case before the MSPB or an arbitrator. If arbitration is selected in a case involving a separation or serious disciplinary action, the Authority does not have jurisdiction to review the arbitration award. Review must be sought in the U.S. Court of Appeals for the Federal Circuit.

There is potential "overlapping" jurisdiction between the FLRA and the MSPB or the Office of Special Counsel in cases involving (1) appeals of arbitration awards where the grievant alleges that an action was based on prohibited discrimination, and (2) allegations of prohibited personnel practices raised as unfair labor practice charges or grievances. In practice, however, there have been few cases where this overlapping jurisdiction has resulted in the assertion of jurisdiction by more than one agency.

Despite the distinct roles played by the FLRA, OPM, MSPB, and the Office of Special Counsel, I believe that it is important that all agencies take advantage of available opportunities to explore common issues and ensure that, to the extent possible, we take consistent approaches to the important personnel and labor issues facing the Federal Government.

C. FEDERAL LABOR RELATIONS AUTHORITY MANAGEMENT

1. In addition to your statutory responsibilities, how can you enhance and promote effective labor-management relations in the government and reduce the likelihood of disputes between these parties?

The major role that the FLRA can assume to enhance the relationship between the parties and reduce the likelihood of disputes is to become the leader in promoting the initiation of cooperative efforts in labor-management relations programs. The time seems ripe to bring together the leadership of the various agencies involved in these issues to explore common problems. The agencies include the FLRA, the Federal Mediation and Conciliation Service, the Office of Personnel Management, the Administrative Conference of the United States, the Merit System Protection Board, the Equal Employment Opportunity Commission, and the

Labor-Management Cooperation Project of the Labor Department. Union views, of course, should also be ascertained.

By working together, we could develop a comprehensive approach to labor-management cooperative programs and other alternative dispute resolution techniques for the Federal program. This may include some pilot programs as well as strengthening and improving those efforts which are already underway. Training for those responsible at all levels should be made available.

Experience in the private sector has shown that for this kind of effort to succeed, the commitment of Cabinet-level officers as well as the involvement of the such inter-agency groups as the President's Council on Management Improvement may be required. As the agency charged by Congress with the responsibility to establish policies and guidance in Federal-sector labor relations, it is appropriate for the Authority to assume a leadership role in this area.

2. What actions will you take to ensure consistency between the decisions rendered by the FLRA and those of the Merit Systems Protection Board or the Office of Special Counsel in areas, such as unfair labor practices or discrimination, which may involve overlapping jurisdiction?

The issuance of "quality" decisions by the Federal Labor Relations Authority necessitates a thorough review of all relevant case law, including that of related agencies, to analyze and resolve issues. The attorneys and labor relations professionals who prepare draft decisions are required to research all case law relevant to the issues in the case and, wherever possible, to apply that case law so that consistent approaches are taken to common issues.

The FLRA, MSPB, and Office of Special Counsel administer different provisions of the Civil Service Reform Act of 1978, however. As a result, some differences in case law are to be expected. Authority decisions which depart from MSPB or Office of the Special Counsel decisions which involve similar issues will contain explanations of the reasons for those differences.

3. Do you believe that labor-management relations in the federal government should reflect, as closely as possible, the practice and precedents of those in the private sector? What do you see as the similarities and differences between the two?

I believe that private sector principles are relevant to interpretation of the Statute. The Statute is not a mirror image of the National Labor Relations Act, however, and the Statute must be administered consistent with the special needs of the Federal Government.

Many provisions of the Federal Service Labor-Management Relations Statute were either patterned after or are virtually identical to provisions in the National Labor Relations Act. As an example, many of the provisions in the Statute relating to the processing of unfair labor practices were taken from similar provisions in the NLRA. Private sector practices and case law of the National Labor Relations Board concerning those provisions are clearly relevant to Authority decisions. In fact, Federal courts frequently look to private sector cases for guidance in interpreting the Statute.

Other provisions of the Statute have no analogue in the National Labor Relations Act. For example, the NLRB does not adjudicate negotiability cases and does not review exceptions to arbitrator's awards. In addition, significant provisions of the Statute, such as those involving the effect of Government-wide regulations on the obligation to bargain, are unique to the Federal Government. In these areas, there is no corresponding private sector practice or precedent with which to be consistent.

4. The FLRA, under Chairman Calhoun, reduced the average age of cases from over two years to six months. Since Mr. Calhoun's resignation last October, the FLRA has been without a working quorum and consequently, the backlog of cases has increased.

(a) How many cases are currently awaiting a decision by the FLRA?

(b) How do you plan to address this situation and what time frame and objectives do you have in mind?

(a) On August 31, 1989, there were 533 cases pending before the Authority.

(b) During the past year, draft decisions have continued to be prepared for my approval. These drafts are now organized for the new Member(s) so that they may be processed either by oldest case first or by a lead case on an issue. In order to assist in this process, the Members will receive an orientation on the Authority and its component parts. As needed, Members will be given

substantive briefings on issues as they are raised or requested. These briefings will cover past precedents and the rationale for them as well as court decisions and any other related information, such as MSPB or NLRB decisions. We will continue to have meetings among the Members to facilitate full discussion of issues whenever that is an appropriate procedure for resolution of specific issues.

My goal and plan is to have no cases over 6 months old by the end of calendar year 1990. Our projection is that this will require the issuance of 756 decisions during Fiscal Year 1990. In only 2 other years has the Authority achieved a higher number of issuances. With the full commitment of all three Members and the support of the staff, the goal will be reached.

5. What do you think is the proper relationship between the FLRA Members and the General Counsel?

I believe that the proper relationship between the FLRA Members and the General Counsel is one which recognizes and respects (1) the complex, distinct, and overlapping statutory responsibilities of each in the administration of the Statute; (2) the requirement that these responsibilities be discharged in a manner consistent with the overall mission of the agency; and (3) the need for efficiency and effectiveness in the administration of agency functions.

For example, the General Counsel has independent statutory responsibility to investigate unfair labor practice charges and to issue and prosecute unfair labor practice complaints. The Authority has delegated to administrative law judges the authority to issue recommended decisions in these cases, and these recommended decisions may be appealed to the Authority. The relationship between the Authority Members and the General Counsel, who is a "party" in these cases, must be the same "arm's length" relationship which the Authority has with parties in all cases.

In representation cases, by contrast, the Authority Members have delegated to the Regional Directors the authority to issue decisions. Unlike unfair labor practice cases, representation cases are not "adversarial." As a result, the relationship between the Authority Members and the General Counsel is not subject to the same restrictions as those applicable in unfair labor practice cases.

I note that there is a different relationship between the Chairman and the General Counsel in administrative

matters than exists between the Authority Members and the General Counsel in substantive areas. Section 7104 of the Statute provides that the Chairman is "the chief executive and administrative officer" of the agency. The Chairman, therefore, clearly is responsible for making and implementing decisions involving administrative matters throughout the agency. Despite the clarity of the Statute, however, responsible decision-making demands the solicitation and careful consideration of as many views as possible prior to final decisions in these areas.

I welcome the opportunity to continue the cordial relationship which I, as Acting Chairman, have with the General Counsel. If confirmed, I will actively seek the views of the General Counsel in administrative matters which are of special interest to the General Counsel, and I will seriously and thoroughly consider those views before making decisions in those areas.

6. Some analysts have questioned both the adequacy and specificity of FLRA remedies issued over the years in unfair labor practice cases.

(a) How do you respond to this assertion?

(b) In which types of cases and under what circumstances would you consider it appropriate to order status quo ante relief?

(c) In which types of cases and under what circumstances would you consider it appropriate to seek a "retroactive bargaining order"?

(a) I am aware that the Authority has been criticized for failing to grant status quo ante and retroactive bargaining order relief in some cases. The courts, however, have generally agreed with the Authority's decisions in this area. Research discloses four cases where Federal courts of appeals reviewed Authority decisions concerning whether or not to grant a status quo ante remedy. In all four cases, the Authority's decision was affirmed by the court. American Federation of Government Employees, SSA Council 220 v. FLRA, 840 F.2d 925 (D.C. Cir. 1988); and American Federation of Government Employees v. FLRA, 785 F.2d 333 (D.C. Cir. 1986); Immigration and Naturalization Service v. FLRA, No. 86-4125 (2d Cir. March 31, 1987)(unpublished); and National Treasury Employees Union v. FLRA, 732 F.2d 703 (9th Cir. 1984).

Only one court has reviewed an Authority decision concerning whether or not to grant a retroactive bargaining order. In that case, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit reversed the Authority's decision to deny that remedy. National Treasury Employees Union v. FLRA, 856 F.2d 293 (D.C. Cir. 1988). The Authority's suggestion for a rehearing en banc in that case has been granted by the court and the Authority is now awaiting the scheduling of briefs and argument.

The issue of the particular relief which will best remedy an unfair labor practice violation is frequently as hotly-contested between the parties as the issues underlying whether or not an unfair labor practice has been committed. Although parties may disagree with and question the Authority's decisions in this area, I believe that the generally favorable response the decisions have received from the courts indicates that the Authority is taking the right approach to resolving these issues.

(b) The Authority uses the criteria set forth in Federal Correctional Institution, 8 FLRA 604 (1982), for determining whether or not to grant a status quo ante remedy in unfair labor practice cases involving impact and implementation bargaining. The criteria set forth in Federal Correctional Institution include (1) whether and when notice was given to the union by the agency of a change in conditions of employment; (2) whether and when the union requested bargaining over the change; (3) the willfulness of the agency's conduct; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether a status quo ante remedy would disrupt or impair the efficiency of the agency's operations.

The U.S. Court of Appeals for the D.C. Circuit expressed approval of the Federal Correctional Institution criteria in American Federation of Government Employees, SSA Council 220 v. FLRA, 840 F.2d 925 (D.C. Cir. 1988). Although Federal Correctional Institution was decided before I became a Member of the Authority, I believe that the recent court approval of the criteria indicates that they enable the Authority to identify appropriate cases in which status quo ante relief best remedies an unfair labor practice.

(c) The Authority set forth the criteria for determining whether to grant a retroactive bargaining order in Environmental Protection Agency, 21 FLRA 786 (1986). The criteria evaluate the nature of the unfair labor practice, the effect of the resulting imposition of bargaining terms

on the parties, and the disruption, if any, which would be caused by ordering retroactive relief. Environmental Protection Agency was decided before I became a Member. I believe that these criteria provide an appropriate framework for analyzing whether or not to grant a retroactive bargaining order.

In conclusion, I note that section 7118(a)(7) of the Federal Service Labor-Management Relations Statute provides the Authority with broad remedial authority in unfair labor practice cases. Determining which remedy will best effectuate the purposes of the Statute involves analysis of the facts and issues in each case. Although the Authority Members may disagree as to the application of the criteria discussed in Federal Correctional Institution and Environmental Protection Agency in individual cases, I believe that the criteria provide useful approaches for consideration of status quo ante remedies and retroactive bargaining orders. I have examined and will continue to examine whether and to what extent status quo ante remedies and retroactive bargaining orders should be used in individual cases and I will not hesitate to vote for the imposition of those remedies in appropriate cases.

7. Commentators have suggested that some of the decisions rendered by the Authority during its first years of existence may be flawed. What standards of review and factors will you consider in evaluating whether certain FLRA practices, decided under a different composition of the Authority, are flawed?

I believe that the same standards should be used to evaluate all Authority decisions. The decisions should be legally correct, consistent with or clearly explain any departures from Authority or judicial precedent, analyze and dispose of all relevant issues, contain a clear outcome, and be written in a manner which is understandable to the parties and the courts.

It is, of course, not possible to "rewrite" previous Authority decisions so as to make them more understandable. Previous decisions which are not legally correct, however, should be reversed in subsequent decisions. In addition, the views of the Authority in 1989 may differ from the views of the Authority in 1979 on particular issues, even if the decisions reached in 1979 are legally correct. Indeed, the views of an individual Member may change over time. If, for any reason, the Authority issues a decision which is inconsistent with previous precedent, it should be stated

that the previous precedent is reversed and the reasons for the reversal should be clearly stated.

8. A recent District of Columbia Circuit Court case (Dept. of Air Force, Sacramento Air Logistics Center v. FLRA) held that the FLRA, by regulation, could not require federal agencies to pay travel expenses and per diems to employees subpoenaed to appear to FLRA proceedings.

(a) What are your views on this decision?

(b) How would you propose the Authority facilitate the appearance of such witnesses to FLRA proceedings?

(a) I participated as a Member in the Authority decisions which were reversed by the court. I believed at the time those decisions were issued that the Authority's regulation was promulgated in accordance with the Statute and was enforceable. The decisions were reversed, however, and the Authority will not seek further review of the court's decision.

(b) In my view, the Authority has three options to facilitate the appearance of Federal employee witnesses at FLRA proceedings.

First, the U.S. Court of Appeals for the D.C. Circuit held "only that the FLRA's regulation compelling federal agencies to pay travel and per diem expenses for their employees required to appear at FLRA proceedings exceeds the congressional grant to the Authority under section 7131(c)" of the Statute. Department of the Air Force, Sacramento Air Logistics Center v. FLRA, 877 F.2d 1036, 1042 (D.C. Cir. 1989). The court specifically did not decide whether the regulation might be upheld under different sections of the Statute. Id. at 1041. Accordingly, the Authority could repromulgate a travel and per diem regulation using statutory authority different from that used previously.

Second, the Authority could recommend a legislative change requiring employer agencies to pay the travel and per diem expenses of employee witnesses. This option would require Congressional action to amend the Statute.

Third, the Authority could undertake to fund the travel and per diem expenses of Federal employee witnesses itself. This option would be consistent with the practice of the National Labor Relations Board. Although the

budgetary implications of this option should not, in my view, be determinative, those implications clearly warrant consideration by the Authority Members.

These options must be addressed by a quorum of Authority Members. As soon as there is a quorum of Members, the advantages and disadvantages of the options will be discussed and a decision will be reached.

9. Section 7123(c) of the Federal Service Labor-Management Relations statute provides that upon the filing of a petition by an aggrieved person or the FLRA, "the filing shall not operate as a stay of the Authority's order unless the court specifically order the stay".

How would you interpret this provision and what is-- or has been-- its practical effect?

The legislative history of the Statute is silent with respect to the "stay" provision in section 7123(c) and the courts have not had an opportunity to address the matter. There has been, therefore, no judicial interpretation of the effect--legal or practical--of the provision. The provision is virtually identical, however, to section 10(g) of the National Labor Relations Act. The legislative history of the NLRA reveals two purposes behind that section. Because section 7123(c) is so similar to section 10(g) of the NLRA, it is reasonable to conclude that the same purposes can be attributed to the two provisions.

First, the provision is intended to notify parties that any liability they may incur under an Authority remedial order, such as backpay, will continue to accrue throughout judicial proceedings unless the court specifically stays the effect of the order. The mere filing of a petition for review will not, therefore, suspend the accrual of liability under an Authority order.

Second, the provision is intended to notify parties that filing a petition for review of an Authority decision will not insulate a party against the possibility that the court will grant an Authority motion for immediate temporary enforcement of the order under section 7123(b) of the Statute. A party must specifically seek that protection by moving to stay the order.

In sum, there has been no judicial interpretation of the stay provision in section 7123(c) of the Statute. It appears, however, that the practical effect of the provision

is to force parties to seek stays from courts in order to either suspend the accrual of liability under an Authority order during judicial proceedings or to forestall the grant of an Authority motion for immediate temporary enforcement.

10. Under Authority past practice in cases involving exceptions to arbitration awards, the FLRA can issue an order denying the exceptions. If the losing party subsequently refuses to comply with the arbitration award, the Authority has required the winner of the award to file an unfair labor practice which the FLRA General Counsel must prosecute. At that point, the Authority may then petition for enforcement.

Some have recommended this process can be streamlined if the Authority were to petition the Courts directly for enforcement of such an award rather than awaiting an action by the General Counsel. What are your views?

The issue of whether the Authority should enforce arbitration awards in court is a complex one which, in my view, should be thoroughly explored by the Members of the Authority. Although I have not formulated a final position on this issue, I believe that there are a number of factors to consider.

I note at the outset that section 7123(b) of the Statute empowers the Authority to petition a U.S Court of Appeals for enforcement "of any order of the Authority[.]" If exceptions are not filed to an arbitration award, there is no order of the Authority to enforce in court. In addition, the Authority does not have jurisdiction to review all arbitration awards in the Federal sector. For example, arbitration awards involving either separations or serious disciplinary actions of competitive service employees are not reviewable by the Authority.

Review of arbitration awards involving either separations or serious disciplinary actions of competitive service employees may be sought (by the losing party) in the U.S. Court of Appeals for the Federal Circuit. If review is not sought in the Court of Appeals for the Federal Circuit, and a party does not comply with the arbitration award, the award is enforceable through the Authority's unfair labor practice procedures. Without an Authority decision resolving the unfair labor practice complaint, there would be no Authority order to enforce in court because the Authority has no jurisdiction to review--and issue an order resolving--exceptions to these awards.

It appears, therefore, that consistent with the Statute, the Authority could not enforce arbitration awards generally. Only Authority orders in arbitration cases where exceptions had been filed to the award--not the arbitration award--could be enforced. Two avenues of enforcement--one for awards which had been reviewed by the Authority and one for awards which were not or could not be reviewed--would be created where there now exists only one.

In addition, a distinction between enforcement of Authority orders in arbitration cases and review of those orders must be made. Section 7123(a) of the Statute provides that Authority orders resolving exceptions to arbitration awards are not judicially reviewable except in very limited circumstances. This provision is consistent with and furthers Congressional intent favoring the finality of arbitration awards. To date, courts have uniformly declined to review the arbitration awards underlying Authority decisions in unfair labor practice cases. Petitioning courts for direct enforcement of the Authority's arbitration decisions--as opposed to unfair labor practice decisions--in those cases could result in indirect review in cases where direct review is prohibited.

I believe that all of these factors should be carefully considered by the Authority Members to determine whether seeking direct enforcement of Authority decisions in arbitration cases would effectuate the policies and purposes of the Statute. In addition, I believe that the views of the parties on this issue should be sought before a final decision by the Authority Members.

11. **The Authority has chosen to decide its major issues on a case-by-case basis. This has entailed extensive litigation over such matters as a union's right to home addresses of its bargaining unit members and travel and per diem rights of union representatives.**

The Authority has the power to issue "major policy guidance/interpretations" to define whole areas of the law so that an issue which applies to several agencies may be fully resolved in one case. This was done in establishing the right to official time for supplemental negotiations.

Given your caseload and budgetary demands, what are your thoughts on when and how this broad authority should be utilized?

The issuance of general statements of policy or guidance provides an effective way to address issues of common application throughout the Government. In particular, issues which may be resolved without the need for factual and credibility determinations may be appropriate for resolution through the issuance of a general statement of policy or guidance. There is a need for both the Authority and the parties to use their resources as efficiently as possible. Greater use of general statements of policy or guidance may provide a useful vehicle to satisfy this need.

Section 2427.5 of the Authority's regulations provides that the Authority will consider the following factors in determining whether to issue a general statement of policy or guidance: (1) whether the question can be more appropriately resolved through other means; (2) whether issuance of the statement would prevent proliferation of cases involving the same question; (3) whether resolution of the question would have general applicability under the Statute; (4) whether the question is presented jointly by the parties; and (5) whether issuance of the statement would promote constructive labor-management relationships.

I believe that these criteria are appropriate and enable the Authority to determine whether a particular issue is better resolved in an individual case decision or through the issuance of a general statement. I encourage the parties to identify issues which they believe are appropriate for the issuance of general statements of policy or guidance and to request the Authority to issue statements on those issues.

The Authority has used an alternate approach--the issuance of "lead decisions"--on some issues. For example, with respect to the issue involving names and home addresses of bargaining unit employees, the Authority was presented with many separate cases requiring adjudication. The Authority issued a "lead" decision on the issue. However, the parties continued to litigate the issue on a case-by-case basis, and the Authority was required to adjudicate those individual cases.

D. THE CIVIL SERVICE REFORM ACT

1. What do you feel are the most important principles of the Civil Service Reform Act?

The Civil Service Reform Act is broad in scope and effected far-reaching changes in Federal employment. The

Act created the Federal Labor Relations Authority, the Merit Systems Protection Board, the Office of Special Counsel, and the Office of Personnel Management. The Act established the Senior Executive Service as well as merit system principles applicable generally throughout the Government.

Among the most important principles of the Act, in my view, are the statutory protections governing labor-management relations in the Federal sector, the establishment of a statutorily-based performance appraisal system, and the prohibitions against prohibited personnel practices.

2. How would you describe the level of protection which the Civil Service Reform Act provides the federal employees?

The Civil Service Reform Act establishes and protects Federal employees' rights to, among other things, organize and bargain collectively, to be hired, retained, and promoted on the basis of fairness and merit, and to be safeguarded from discrimination and other prohibited personnel practices. The Act also establishes procedures enabling Federal employees to assert and defend these rights through procedures of the Federal Labor Relations Authority, the Merit Systems Protection Board, the Office of Special Counsel, and the Equal Employment Opportunity Commission. These are important rights and, with respect to the Federal Labor Relations Authority in particular, these rights are enforced vigorously.

The provisions of the Act which govern labor relations also recognize rights of the Federal Government as employer. For example, section 7101 of the Statute states that one of the purposes of the Statute is to establish procedures "designed to meet the special requirements and needs of the Government." The Statute also provides that its provisions must be interpreted consistent with the requirement of an effective and efficient Government. The Authority frequently is required to balance the rights of agencies, unions, and individuals to develop policies and procedures which promote the purposes of the Statute.

In general, I believe that the provisions enacted by Congress in the Civil Service Reform Act which concern labor-management relations strike the appropriate balance between individual, union, and agency rights.

3. Based on your experiences as a Member of the Authority to date, do you see any particular change(s) in the Act needed to help clarify and carry out the goals of this legislation?

I believe that it would be beneficial to the Federal labor-management program in general if Congress considered three issues.

The first issue concerns the relationship between negotiability appeals and the collective bargaining process. Currently, the Statute provides a union with an unlimited right to file a petition for review of negotiability issues with the Authority provided the agency with which it is bargaining has alleged that a bargaining proposal is nonnegotiable. The Statute does not require that the parties involved in the negotiations have engaged in any negotiations over the proposal or have attempted to resolve their negotiability dispute bilaterally. As a result, the Authority is required to adjudicate negotiability cases involving proposals which, if they are found to be negotiable, may be substantially modified or withdrawn during negotiations. This process diverts the resources of the Authority and the parties from more constructive activities.

Congress may wish to consider whether a requirement that the parties engage in efforts to resolve negotiability disputes through the bargaining process should be imposed. Such a requirement, carefully written and administered, could expedite the collective bargaining process and eliminate the filing of unnecessary (and perhaps meaningless) negotiability appeals.

Second, provisions in collective bargaining agreements which conflict with management's rights under section 7106(a) of the Statute are now unenforceable even if those provisions were reviewed and approved by an agency head. Congress may wish to consider whether or not to modify the Statute to include a provision which would allow grievance arbitrators to enforce those provisions. Among other things, such a provision would promote the finality of arbitration awards and encourage labor-management cooperation while, at the same time, safeguarding the process by which agreements are reviewed within agencies.

Third, the issue of whether Federal employees whose pay and fringe benefits are not set specifically by law are entitled to bargain collectively over those issues has resulted in an enormous amount of litigation, both before

the Authority and the courts. Most Authority, and indeed court, decisions on the issue have not been unanimous. To clarify the matter, therefore, Congress may wish to address whether or to what extent pay and fringe benefits are negotiable for these employees.

E. RELATIONS WITH CONGRESS

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?**

   Yes.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?**

   Yes.

POST-HEARING QUESTIONS FROM CHAIRMAN GLENN

FOR

JEAN MCKEE

1. What are your views on pay bargaining?

I believe that the negotiability of proposals relating to pay and fringe benefits of Federal employees must be determined on a case-by-case basis by applying the provisions of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135, which are applicable to determining the negotiability of any proposal.

Under the statutory framework, it is first necessary to determine whether a proposal concerns a condition of employment of bargaining unit employees. Section 7103(a)(14) of the Statute defines "conditions of employment" as follows:

> "[C]onditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--
>
> * * * * * * *
>
> (C) to the extent such matters are specifically provided for by Federal statute[.]

If a proposal concerns a condition of employment, it is necessary to determine whether the proposal is inconsistent with (1) Federal law, (2) Government-wide regulation, or (3) an agency regulation for which there is a compelling need. A proposal concerning a condition of employment which is not inconsistent with law or regulation is negotiable. 5 U.S.C. § 7117.

Since I became a Member of the Authority in 1986, I have applied the statutory framework in numerous cases involving the negotiability of proposals concerning pay and fringe benefits. I have determined that some proposals concerning these issues were negotiable and other proposals were not. For example, in American Federation of Government Employees, AFL-CIO, Local 1897 and Department of the Air Force, Eglin Air Force Base, Florida, 24 FLRA 377 (1986)

(Chairman Calhoun dissenting), I joined the majority opinion of the Authority and found that a proposal concerning money-related fringe benefits of nonappropriated fund employees was negotiable. By contrast, in American Federation of Government Employees, AFL-CIO and Department of Defense, Department of the Army and Air Force, Headquarters Army and Air Force Exchange Service, Dallas, Texas, 32 FLRA 591 (1988), I found that a proposal concerning the commission rates to be paid to employees who are subject to provisions in the Prevailing Rate Systems Act, 5 U.S.C. §§ 5341, et seq., was nonnegotiable because (1) the commission rates are specifically provided for by Federal statute and, as a result, (2) the proposal did not concern a condition of employment as defined in section 7103(a)(14) of the Statute.

The issue of the negotiability of pay and fringe benefits is now the subject of litigation before the United States Supreme Court. The Court recently has granted the Solicitor General's petition for a writ of certiorari to the judgment of the U.S. Court of Appeals for the Eleventh Circuit in Fort Stewart Schools v. FLRA, 860 F.2d 396 (11th Cir. 1988). Fort Stewart Schools, cert. granted, No. 89-65 (October 2, 1989). In that case, the U.S. Court of Appeals for the Eleventh Circuit enforced the Authority's decision in Fort Stewart (Georgia) Association of Educators and Fort Stewart Schools, 28 FLRA 547 (1987) (Chairman Calhoun dissenting), that certain proposals concerning the salaries and benefits of teachers employed under the provisions of 20 U.S.C. § 241 were negotiable.

Both the Authority and the National Treasury Employees Union have filed petitions for writs of certiorari to the en banc judgment of the U.S. Court of Appeals for the Fourth Circuit in Nuclear Regulatory Commission v. FLRA, 879 F.2d 1225 (4th Cir. 1989). The U.S. Court of Appeals for the Fourth Circuit reversed the Authority's decision in National Treasury Employees Union and Nuclear Regulatory Commission, 29 FLRA 217 (1987) (Chairman Calhoun dissenting), that proposals relating to the salary structure for employees of the Nuclear Regulatory Commission were negotiable. In addition, I have authorized the Authority's Office of the Solicitor to file a petition for a writ of certiorari to the judgment of the U.S. Court of Appeals for the Sixth Circuit in Fort Knox Dependent Schools v. FLRA, 875 F.2d 1179 (6th Cir. 1989), reversing the Authority's decision in Fort Knox Teachers Association and Fort Knox Dependent Schools, 25 FLRA 1119 (1987) (Chairman Calhoun dissenting).

In summary, I believe that the applicable statutory framework for determining the negotiability of all proposals, including those relating to pay and fringe benefits, must be applied carefully on a case-by-case basis.

2. The FLRA has had a high percentage of cases reversed in the Courts of Appeal. To what do you attribute this result and what can be done to improve the FLRA's track record?

I believe that the FLRA's reversal rate is attributable, at least in part, to three interrelated factors.

First, the Federal Service Labor-Management Relations Statute has been in effect for only a little over 10 years. Because of the relative "youth" of the Statute, the Federal Labor Relations Authority frequently is called upon to decide issues on which there is little or no judicial precedent.

Second, in approximately 50 percent of all court cases, the Authority is opposed by another Government agency in its capacity as an employer. As a result, the court is faced with assertions by both parties that their respective positions are in the best interests of the Government. In many cases, the courts have adopted the agency employer's view that the public interest is better served by agency operations without collective bargaining. In this connection, I am advised by the Authority's Office of the Solicitor that our most recent litigation statistics show that the Authority's reversal rate is approximately twice as high in court cases where the Authority is opposed by a Government agency as in cases where the Authority is opposed by a labor union.

Third, unlike many other agencies, the Authority is required in many cases to interpret laws and regulations other than the Statute. Many courts have held that the Authority's interpretation of these "outside" laws and regulations is entitled to no deference. In fact, if the law or regulation is administered by the Government agency which opposes the Authority in court, the court may accord more deference to the agency's interpretation of the law or regulation than the Authority's interpretation.

I believe that these factors, particularly the latter two, which are unique among Government agencies, contributes in part to the Authority's reversal rate in court. I also

believe that the Authority's ongoing efforts to improve the quality of its decisions may result in a corresponding improvement in the Authority's "track record" in court. In particular, the Authority's emphasis on thorough research of precedent of the Authority, courts, and other administrative agencies, combined with the goal that all decisions be written in a manner which clearly and understandably disposes of all relevant issues, should increase the numbers of cases which are affirmed in court. To further enhance this goal, as Acting Chairman, I implemented a training program to enhance the oral advocacy skills of employees in the Solicitor's Office.

I remain committed to the Authority's "quality" goals and, if confirmed as Chairman, will attempt to ensure that the Authority is once again issuing timely, quality decisions in all cases.

3. Some have suggested that either statutory or regulatory changes could help speed up Federal collective bargaining and the resolution of negotiability questions and also reduce the amount of filings and litigation. What are your views?

As I have noted previously in my responses to the Committee, the Statute provides a union with an unlimited right to file a petition for review of negotiability issues with the Authority provided that the agency with which the union is bargaining has alleged that a proposal is nonnegotiable. The Statute does not require the parties involved in the negotiations to engage in any bargaining over the proposal or to attempt to resolve the dispute bilaterally before a negotiability appeal is filed. In some cases, therefore, the Authority is required to adjudicate negotiability cases involving proposals which, if they are found to be negotiable, may be substantially modified or withdrawn during negotiations.

To help ensure that the Authority's negotiability decisions involve proposals which are in genuine dispute, the Congress may wish to consider imposing a requirement that the parties engage in bilateral efforts to resolve negotiability disputes before negotiability appeals may be filed. Such a requirement could reduce the numbers of negotiability appeals which are filed with the Authority and, in so doing, could enhance the collective bargaining process.

I am not aware of other specific proposals to facilitate the collective bargaining and negotiability

processes. I would be pleased to consider any proposals, however, and to discuss them with the other Members.

4. In one of your pre-hearing questions, you indicated that you agreed, for the most part, with the FLRA's past position on the appropriateness of status quo ante remedies, which have been used only rarely. Some analysis have recommended that the FLRA consider following the private sector rule that full status quo ante remedies are presumed to be appropriate and should be involved whenever possible.

What are your thoughts on this approach?

The Authority has, in the past, distinguished between cases where an agency was obligated to bargain over the substance of a change in a condition of employment and cases where the agency was required to bargain only over the impact and implementation of the change. In cases where an agency unilaterally changed a negotiable condition of employment, status quo ante remedies are imposed. For example, in Department of the Navy, Northern Division, Naval Facilities Engineering Command, 24 FLRA 907, 908 (1986), the Authority stated the following:

> We find . . . that where management has made a unilateral change in a negotiable term and condition of employment, effectuation of the purposes and policies of the Statute requires a return to the status quo ante, absent special circumstances, in order not to render meaningless the material obligation to negotiate.

In cases where an agency is required to bargain only over the impact and implementation--not the substance--of a change, the Authority has used the criteria set forth in Federal Correctional Institution, 8 FLRA 604 (1982), to determine whether to grant a status quo ante remedy. These criteria include (1) whether and when notice was given to the union by the agency of a change; (2) whether and when the union requested bargaining over the change; (3) the willfulness of the agency's conduct; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether a status quo ante remedy would disrupt or impair the efficiency of the agency's operations. The U.S. Court of Appeals for the D.C. Circuit expressed approval of the Federal Correctional Institution criteria in American Federation of Government Employees, SSA Council 220 v. FLRA, 840 F.2d 925 (D.C. Cir. 1988).

I believe that, in general, the Authority's distinction between cases where an agency is required to bargain over the substance of a change and cases where an agency is required to bargain only over the impact and implementation of a change, as well as the criteria set forth in Federal Correctional Institution, have proved useful to identify cases appropriate for status quo ante relief. I am willing to consider other approaches, however. As I stated previously in my responses to the Committee, I have examined and will continue to examine whether and to what extent status quo ante remedies, as well other remedies, should be used in individual cases.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. Biographical Information

1. Name: (Include any former names used.)

Billy Ray Phillips (Bill)

2. Position to which nominated:

Deputy Director, Office of Personnel Management

3. Date of nomination:

September 6, 1989

4. Address: (List current place of residence and office addresses.)

Residence: 8023 Langbrook Road
Springfield, VA 22152

Office: Office of the Secretary
U.S. Department of Education
Room 4181
400 Maryland Avenue, S.W.
Washington, D.C. 20202

5. Date and place of birth:

June 8, 1944
Whitesboro, Texas

6. Marital status: (Include maiden name of wife or husband's name.)

Married
Candy Poole Phillips

7. Names and ages of children:

Kevin Ray Phillips, 21
Jodi Cheri Phillips, 17
Jaala Dawn Phillips, 9

8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.)

Institution:	Woodrow Wilson High School Dallas, Texas
Dates Attended:	1959 - 1962
Date Degree Granted:	1962
Degree Received:	High School Diploma

Institution:	University of Texas Arlington, Texas
Dates Attended:	1962 - 1965
Degree Received:	None
Institution:	Chapman College Vandenburg AFB, California
Dates Attended:	1966 - 1968 (part-time)
Degree Received:	None
Institution:	University of Nebraska Omaha, Nebraska
Dates Attended:	1968 - 1969
Date Degree Granted:	1969
Degree Received:	Bachelor of Arts
Institution:	University of Nevada Reno, Nevada
Dates Attended:	1972 - 1981 (part-time)
Degree Received:	None

9. Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Position:	Chief of Staff/Counselor to the Secretary
Employer:	U.S. Department of Education
Location of work:	400 Maryland Ave., S.W. Washington, D.C. 20202
Dates of employment:	10/88 to present
Position:	Convention Manager
Employer:	1988 Republican National Convention
Location of work:	310 First Street, S.E. Washington, D.C. 20003
Dates of employment:	6/87 - 9/88
Position:	Vice President
Employer:	Russo Watts & Rollins
Location of work:	Washington, D.C. (office now closed)
Dates of employment:	12/86 - 5/87 (on leave of absence 6/87 - 4/88)
Position:	Executive Director
Employer:	Fund for America's Future
Location of work:	Washington, D.C. (office now closed)
Dates of employment:	12/85 - 12/86

Position:	Chief of Staff
Employer:	Republican National Committee
Location of work:	310 First Street, S.E. Washington, D.C. 20003
Dates of employment:	1/83 - 12/85

Position:	Campaign Manager
Employer:	Friends of List
Location of work:	Las Vegas, NV (office now closed)
Dates of employment:	6/82 - 11/82

Position:	Executive Assistant
Employer:	Governor's Office (Robert List)
Location of work:	State Capitol Carson City, NV
Dates of employment:	1/79 - 1/83 (took leave of absence July to November 1982 to manage Governor's re-election campaign)

Position:	Deputy Campaign Director
Employer:	List for Governor Committee
Location of work:	Reno, NV (office now closed)
Dates of employment:	12/77 - 1/79

Position:	Reporter
Employer:	Reno Newspapers Inc.
Location of work:	P.O. Box 280 Reno, NV
Dates of employment:	1/76 - 12/77

Position:	Legislative Aide
Employer:	Congressman John Krebs
Location of work:	Rm 435 Cannon HOB Washington, D.C. 20515
Dates of employment:	1/75 - 1/76

Position:	Reporter
Employer:	Visalia Newspapers Inc.
Location of work:	Visalia, CA
Dates of employment:	10/72 - 1/75

Position:	Reporter
Employer:	Hanford Sentinel
Location of work:	Hanford, CA
Dates of employment:	10/70 - 10/72

Position:	Reporter
Employer:	Valley News
Location of work:	San Jose, CA (paper no longer exists)
Dates of employment:	7/70 - 10/70

Position:
Employer: U.S. Air Force
Location of work:
Dates of employment: 10/65 - 7/70

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

I have not served in any government capacity other than listed above, including any advisory, consultative, honorary, or other part-time service.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

Convention Manager
1988 Republican National Convention
310 First Street, S.E.
Washington, D.C. 20003
6/87 - 9/88

Consultant
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003
3/87 - 5/87
9/88 - 10/88

Consultant
1988 Republican National Convention
310 First Street, S.E.
Washington, D.C. 20003
3/87 - 5/87

Vice President
Russo Watts & Rollins
Washington, D.C.
(office now closed)
12/86 - 4/88

Executive Director
Fund for America's Future
Washington, D.C.
(office now closed)
12/85 - 12/86

Chief of Staff
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003
1/83 - 12/85

12. Memberships: (List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.)

National Republican Institute of International Affairs
Washington, D.C.
1985 - 1986
Board of Directors

Society of Professional Journalists - SDX
Fresno, California
10/70 - 12/74
President, 1974

Commission on National Political Conventions
Center for Democracy
Washington, D.C.
1988 - present
Member

First Baptist Church
Springfield, Virginia
1983 - present

First Baptist Church
Carson City, Nevada
1980 - 1983

St. John's Presbyterian Church
Reno, Nevada
1976 - 1980

First Presbyterian Church
Annandale, Virginia
1975

First Presbyterian Church
Visalia, California
1972 - 1974

First Presbyterian Church
Hanford, California
1970 - 1972

East Dallas Baptist Church
Dallas, Texas
1956 - 1970

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

Convention Manager
1988 Republican National Convention
310 First Street, S.E.
Washington, D.C. 20003
1987 - 1988

Chief of Staff
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003
1983 - 1985

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Convention Manager
1988 Republican National Convention
310 First Street, S.E.
Washington, D.C. 20003
1987 - 1988

Executive Director
Fund for America's Future
Washington, D.C.
1986

Chief of Staff
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003
1983 - 1985

Campaign Manager
Friends of List
Las Vegas, Nevada
1982

Deputy Campaign Manager
List for Governor
Reno, Nevada
1978

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Republican National Committee - $300 between 1983 and 1986

14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Routine service citations for duty in U.S. Air Force and tour of duty in South Vietnam

Outstanding Young Men of America, 1978 and 1979

15. Published writings: (List all titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

Wrote numerous newspaper articles as a reporter, 1967 - 1977

16. Speeches: (Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.)

None relevant to position

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

President Bush selected me for this position based on his personal knowledge of my administrative and management abilities in a series of executive-level positions. I also have been a supporter of the President for a number of years and was employed by his political action committee in 1986 and was manager of the 1988 Republican National Convention. Also, President Bush made his nomination based on the recommendation of OPM Director Constance Newman, who initially recruited me for the nomination.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have held a series of administrative and executive positions in my career that have developed my managerial abilities in policy formulation, decision making and personnel policy. My experience has prepared me to assume the responsibilities which face the executives of the Office of Personnel Management. My record also points to my interests and ability to improve the morale and self esteem of work forces while obtaining quality and efficient work performance. I also share with the President and Director Newman a strong commitment to public service and to those career employees who have chosen a career serving their Nation in the civil service.

B. Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

C. Potential Conflicts of Interest

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   None

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   As staff member for Governor of Nevada, 1979 - 1982, represented Administration from time to time with individual members of state legislature concerning a variety of bills.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

   Should a potential conflict be determined, I will discontinue any relationship, agreement, etc. I do not believe any exist.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

   Yes

D. Legal Matters

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

   Spring, 1963 was placed on disciplinary probation at University of Texas - Arlington for one semester after I sold a text book not belonging to me to the campus bookstore.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

   July 1972 was charged with trespassing in Hanford, California. The charges were dismissed.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

   No

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

   No

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   None

E. FINANCIAL DATA

(retained in committee files)

AFFADAVIT

Billy Ray Phillips being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

Billy Ray Phillips

Subscribed and sworn before me this 17th day of September, 1989

Philip A. Guarino
Notary Public

My Commission Expires June 14, 1991

PRE-HEARING QUESTIONS FOR BILL R. PHILLIPS
NOMINEE TO BE DEPUTY DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

I. THE NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as Deputy Director of the Office of Personnel Management?

First, I believe President Bush placed my name into nomination to serve as Deputy Director of the Office of Personnel Management based on the recommendation of OPM Director Newman who initially recruited me for the deputy position and recommended my nomination to the President. Secondly, President Bush has a personal knowledge of my professional history and my abilities as a manager. The President and OPM Director are personally aware of my work history. I have held a number of positions of expanded responsibilities and authority in which I have successfully managed operations while motivating a workforce to achieve maximum productivity. In addition, President Bush and Director Newman are aware that I share their respect for those in public service. The Administration faces many challenges in the area of public service and President Bush and Director Newman have confidence that my talents and expertise not only support their objectives but also complement the OPM management team being assembled to achieve those goals.

2. Were there any conditions, expressed or implied, attached to your nomination? If so, what were they?

There were no conditions, expressed or implied, attached to my nomination or any to my service in the position, should I be confirmed.

3. Have you made any specific commitments with respect to the policies and programs you would seek to implement as Deputy Director? If so, what are they?

If I am confirmed, I will enter the position of OPM Deputy Director without any specific commitments to any individual or group on my part with respect to the policies and programs of the Office of Personnel Management. Since my nomination was submitted I have read a number of papers on various issues facing OPM, but I have not discussed any specific positions or made any recommendations on proposed or existing policy. I will not participate in any discussions on policy decisions prior to confirmation.

4. Are there any issues involving the Office of Personnel Management from which you may have to disqualify yourself? If so, please explain.

To the best of my knowledge, there are no issues involving the Office of Personnel Management from which I may have to disqualify myself, if I am confirmed.

II. ROLE AND RESPONSIBILITIES OF THE DEPUTY DIRECTOR OF OPM

1. What will be your basic role and responsibilities as the Deputy Director of the Office of Personnel Management?

During my initial discussions with Director Newman we discussed in general terms my role, if confirmed, as Deputy Director. Since the nomination process formally began, Director Newman and I have not had any dialogue regarding specific details of my role. We both felt it was more proper to complete the confirmation process prior to setting any specific goals, job descriptions or other policy-related matters. However, based on my initial conversations, my own professional background, and my personal knowledge of Director Newman's style of management, I am clear in regard to my role and responsibilities if I am confirmed. As OPM Deputy Director, I would serve as chief operations officer for Director Newman, the chief executive officer of the agency. In that capacity, it would be my responsibility to supervise the day-to-day operations of OPM, ensuring the policies of President Bush, Director Newman, and the Congress are carried out as directed by Director Newman. I would also serve as a key member of the OPM management team as the decision-making process is addressed; serve as acting Director in the Director's absence; represent the agency, Director and Administration as assigned; and assume specific duties as assigned.

2. What do you consider to be the major challenges facing OPM today?

As a result of my service as a senior officer of a Cabinet-level department, as well as my years on a governor's staff, I have become acutely aware that one major challenge facing OPM is the negative image of the public service employee -- both self-image among the employees as well as the public's perception of the civil servant. Our nation is fortunate to have some of the most professional, dedicated career employees in the world, but unfortunately the general perception is quite the contrary. In many nations a career in government service is revered as a high calling; however, our country has slipped into a low level of appreciation for the civil servant as someone often assumed to be unqualified for a profession in the private sector. As this public perception has prevailed, the self-image and morale of the career Federal employees have suffered, as well as the quality of their services rendered to the public. I firmly believe the perception must be addressed in tandem with the seeking of solutions to a number of additional challenges facing OPM today and a corrected course of perception cannot be delayed or ignored. Public service is a demanding but rewarding

career. If our government is to meet the current and future needs of its citizens we must act now to improve the image of the public employee.

In addition to the image problems, which I believe impact almost every challenge facing OPM, there are a number of more specific challenges which OPM currently is addressing. Each challange has very complex aspects within it, but each can be addressed and improved upon with cooperation and communications between the many operations impacted. Specific areas of challenge involve pay, health and retirement benefits, recruitment and retention of employees, service to government agencies, oversight of agencies, and of course, service to citizens.

3. **What will be your priorities as Deputy Director of OPM? Have you discussed any of these objectives with the Director of OPM?**

It is difficult to outline specific priorities as OPM Deputy Director prior to confirmation. If I am confirmed, however, my first priority would be to support the role of Director Newman, assuming those tasks specifically assigned. Improvement of employee morale would be a personal priority. I firmly believe that most of the challenges facing OPM currently are directly tied to improving the morale and image of the public career employee. Other priorities, from my studies, are the recruitment and retention of Federal employees; pay; health, insurance and retirement benefits; and improving OPM's service to other agencies and the public.

I have not had any detailed discussion with Director Newman about the setting of specific priorities, but based on our earlier general conversations I think my proposed priorities will mesh nicely with her own plans and objectives. Naturally, I will take my lead from her direction.

4. **What kind of relationship do you anticipate with the Director of OPM?**

Frankly, among the attractions to the position of OPM Deputy Director is the opportunity to work along side Director Newman. My knowledge of her expertise, professionalism, and management approach leave me with every reason to expect a challenging and rewarding relationship as her deputy, if I am confirmed. I fully expect to be a partner in the management and decision-making process at OPM and look forward to an exciting, as well as demanding, professional challenge.

5. What actions will you take as Deputy Director of OPM to improve both the capability and the public perception of the civil service?

As I have stated earlier, the perception of the civil service is a major concern I share with Director Newman and President Bush. In addition, if the Federal workforce is to respond adequately to the citizens, it is imperative that OPM take the lead in improving the capability of that workforce.

It is premature for me to outline detailed plans of action on these two issues, but if I am confirmed, I will contribute my thoughts and ideas to the current dialogue underway at OPM. Among those are a number of actions -- with little or no budget impact -- that can be taken by OPM and government agencies to improve the perception of the civil service. One example that comes to mind is that with little effort a public recognition of professionalism, (such as was exhibited by Kevin Bachman, the FAA air traffic controller in Sioux City, IA, during the recent airline crash) could contribute considerably to improving the public perception of the government employee. OPM could lead the way in ensuring that such actions by employees of all trades and levels are publicly recognized, and as a result, add to the improved perception of the civil service worker. There are hundreds, if not thousands, of examples that could be highlighted on a regular basis at the local and national levels.

The improvement of the capability of the Federal workforce is a complex and sometimes potentially expensive proposition but, if we are to meet the needs of the citizenry in the coming decade, it is imperative that the Federal government invest in the recruitment and training of highly qualified and motivated individuals. Among the mechanisms available, and currently a priority of Director Newman, are the training facilities and programs already under the tutelage of OPM. For example, the Federal Executive Institute currently is coming out of a period of semi-stagnation and receiving increased attention in order to better train and develop the government's executive corps.

If confirmed, I would take a personal interest in current proposals and work with Director Newman to ensure the emphasis on perception and capabilities receive proper attention.

6. Do you believe any changes are warranted in either the authority or organizational structure of OPM?

At this time, I do not have enough information to accurately comment on any specific changes of authority or organizational structure that may be necessary at OPM. It has never been my approach to simply make changes in an organization for the

sake of change itself but, if I am confirmed, I certainly will enter the duties of OPM Deputy Director with an eye toward the current situation and what modifications may be necessary to improve the performance of OPM and its staff.

7. **In your opinion, what personnel management functions are best performed by Federal agencies themselves and which functions are best performed by OPM? Why?**

Currently, I am not comfortable taking a definitive position on what precise personnel management functions are best performed by Federal agencies and which functions are best performed by OPM. However, it seems to me that personnel policy direction and oversight is functionally an activity of OPM in a vast majority of the cases while the daily operations are best performed at the agency level. Certainly the main objective is to perform all functions where they are most efficiently performed and best serve the constituency.

Apparent oversight activities by OPM would include investigations; retirement and benefits systems; collection and analysis of Federal workforce data; and examinations for entry-level positions in broad occupations common to most agencies. OPM should also retain authority for development of qualifications and classification standards common to most agencies. OPM is in the best position to write regulations interpreting legislation and to serve as a repository of corporate memory and as a source of expertise for agencies.

Individual agencies are in the best position to recruit and perform other functions related to occupations unique to their missions. Individual agencies should also adapt the broad regulations and programs of OPM to their own specific situations.

If confirmed as OPM Deputy Director, it would be my methodology to keep an open mind as various functions are reviewed, with the ultimate objective being efficient management of the function at whatever level best serves the constituent.

8. **How do you envision your relationship and the nature of your responsibilities as they related to:**

(a) the President

As the OPM Deputy Director, it would be my function to support OPM Director Newman in her obligations and response to the President. I would function in that support capacity as the Director responds to the President and communicates the President's policies and directives to the Federal agencies

in the Executive Branch.

(b) the Congress

The OPM Director has the responsibility of reporting to the Congress all functions and policies of OPM through various methods, including testimony before committees, individual responses to Members of Congress, and meetings with various Members and their staff. As Deputy Director, I would support the Director in this function either through assistance in preparation for such meetings and hearings or in some cases appearing before individual Members or committees myself.

(c) the Merit Systems Protection Board

Under the 1978 Civil Service Reform Act the Merit Systems Protection Board is an independent entity. It is important that OPM tread carefully in its relationship with the Board in order not to violate the intent of the 1978 law. As Deputy Director I would perform in support of the Director in any relationship with the Board. Although I am not prepared at this time to address specific activities, if I am confirmed, I would encourage proper communications between OPM and the Board. Also, as Deputy Director I would monitor the activities and studies of the Board to ensure that OPM is responsive as well as benefitting from any studies conducted by the Board.

(d) the Office of Special Counsel

The Civil Service Reform Act of 1978 established the Special Counsel as an independent office with the mandate to investigate any alleged improprieties in unauthorized personnel practices, violations of the Hatch Act, and any other violations of civil service laws, rules or regulations, and when appropriate, prosecute. Under these circumstances, it is imperative that OPM remain separate from the activities of the Special Counsel except in those cases requiring corrective action on the part of OPM.

(e) the Federal Labor Relations Authority, and

As the OPM Deputy Director it would be my responsibility to support the Director in any actions required as a result of the Authority's rulings. As an independent agency, the Authority reviews labor-management disputes and it is the responsibility of OPM to follow these findings. In addition, OPM must monitor the FLRA decisions to ensure the Federal personnel system adheres to any policy-making decisions made by the FLRA.

(f) the Office of Government Ethics?

This office became an independent agency October 1, 1989. It will be the function of that agency to establish ethical guidelines and regulations for government-wide use. As Deputy Director, I will, along with the Director, consult with the agency on these guidelines. In addition, it will be the responsibility of OPM to provide personnel management support now provided to all other Federal agencies.

In summary, it is important, as the Deputy Director, that I support the Director in OPM's relationship with each of the above stated agencies, ensuring that OPM meets all its obligations, but also protects the integrity of the independence of each agency where mandated.

9. In your view, what should be the relationship between the Office of Personnel Management and the Office of Management and Budget?

It is my opinion that currently two of the most important agencies in the Federal government are the Office of Personnel Management and the Office of Management and Budget. During these times of budget restraints and limited resources, it is imperative that the two agencies be responsive to limitations facing the Federal government and that every effort be made to provide quality governmental services through proper budgeting, personnel management and programmatic management. If I am confirmed, I would work in conjunction with the Director to build upon communications and coordination between OMB and OPM in order to maximize our financial and personnel resources. It is my belief that the two agencies must work as partners in support of the President and Administration and that relationship mandates the necessity to seek ways to improve current relationships and build on existing practices. In addition, President Bush has placed increased emphasis on the public service quotient of governance which results in the increased need for the two agencies to perform their separate but often similar functions in cooperative tandem, while maintaining their independence.

III. THE FEDERAL WORKFORCE AND CIVIL SERVICE

1. One of the largest problems currently facing the Federal workforce is its inability to retain employees, mainly due to the pay gap with the private sector. Recent reports have said that public sector salaries are 28% lower than those found in the private sector. OPM Director Newman has promised that OPM will be reevaluating its overall pay system to address this critical issue.

(a) What policy options would you consider most effective in meeting this challenge?

I am acutely aware of the problem of workforce recruitment and retention within the Federal government, and I believe that a major contributor to this challenge is the pay issue. The complexity of the issue has resulted in a number of years and many studies in an attempt to ensure that employees in the public sector receive a fair pay for a day's work. I strongly believe that just as we all expect the public service employees to serve the public properly, public service employees have a right to expect to be fairly compensated. The Office of Personnel Management through internal as well as contracted studies has made and continues to make a concerted effort to fairly resolve the question of pay.

Recently the issue has become prominent in public debate as the nation's leaders, both in government and private industry, have expressed increased sensitivity to the issue of pay. Several weeks ago OPM received the results of the Wyatt Company study. Director Newman, upon her confirmation, made the issue a priority on her agenda. Recently she formed a task force of national leaders who are currently reviewing the Wyatt report, as well as internal information, and will be reporting their findings within a few weeks. President Bush has publicly stated his concern over the issue and has made some definitive recommendations for executive pay.

The issues range from how far government should move in realignment of pay, based on profession and geographic considerations, to defining the process for setting the pay scales.

It is clear that until the pay issue and its related factors are addressed, the Federal workforce may be plagued with morale problems, higher than desired turnover rates in some geographic areas or occupations, and job dissatisfaction among many career employees. Director Newman, true to her pledge during confirmation,

has moved quickly to begin positive action toward a solution.

The system has not proved flexible enough to adapt to diverse or rapidly changing labor market conditions. Severe recruitment and retention problems in certain localities and in certain occupations have overwhelmed a monolithic pay system which essentially is 40 years old.

Some of the policy options that can be considered include more flexibility on pay rates at the agency level, increased emphasis on geographic location, emphasis on comparable rates among the private sector when practical, and an off-set of pay differential with improved benefits for career employees. It seems to me that one key is the development of a system simple enough to be implemented in a timely and efficient fashion, in order for the system to be fair and equitable.

It is clear to me, however, that this complex problem will take additional time and expertise before any definitive recommendations can be put forth for consideration by the Administration and the Congress. At this time, I am not prepared to offer any specific course of action, but I am convinced that it cannot be approached in a piecemeal fashion, but must be done as a complete package. If I am confirmed, needless to say, this issue will become a high priority on my agenda as Deputy Director -- a challenge I will gladly accept.

(b) **What other initiatives must OPM take to help attract and retain skilled Federal employees?**

On a parallel track, while working to improve the pay issue for Federal workers, OPM should also be working on the recruitment and retention of employees. I know that this issue is of particular interest to the President and Director. As I have stated previously, the image of the public service employees must be enhanced if we expect to be successful in recruiting professionals in the coming years and retaining the effective members of the current workforce. I believe the Federal government needs to emulate the private sector, where appropriate and practical, in its personnel methodologies and it is increasingly necessary that OPM and the agencies be open to innovative personnel procedures which result in the improved self-image of employees. And, finally, OPM must be a leader in self-evaluation by the employees themselves. They can contribute to the professionalization of the public service image by expressing their contributions in a positive light. In

turn, the public's perception is improved which also encourages those entering the workforce to consider public service as an option.

In addition to improving image, it is imperative that the Federal government, like any major employer, remain competitive on the job market. There should be a continuing effort to ensure that, as an employer, the government offers fair as well as economical pay, benefits packages, training, equitable job advancement opportunities, recognition of quality performance, and well-trained management.

It is clear that these are complex issues that cannot be corrected and improved upon overnight, but they are no less critical because of that complexity and must remain a priority for OPM, the Administration, and Congress.

2. **Some analysts have suggested the current pay and benefits system is too complicated and confusing. Do you share this assessment and, if so, what can you do as Deputy Director to resolve it?**

My initial experiences as a senior officer of a Cabinet-level department caused me to believe the pay and benefits system is indeed too complicated and confusing. However, as I worked with it over the months, I did come to appreciate the basis for many of the practices of the system. I have concluded that while it is a complex set of systems, the true issue is not to simplify but rather to ensure equity and fairness. As Deputy Director, I would advocate meaningful and true reform in the systems with emphasis on improvement and innovation rather than placing the emphasis strictly on simplification. This is not to say, however, that the systems cannot stand some streamlining and restructuring, particularly the health benefit systems. In fact, unless a system of pay is simple enough to implement in a timely fashion, it inherently will be unequitable and unfair. I have reviewed a variety of material on the systems and will continue to do so, if confirmed, but I am not prepared, at this time, to present specific recommendations.

3. **What do you believe are the utility and relevance today, if any, of the 1967 Federal Salary Act and the 1970 Pay Comparability Act?**

In all honesty, I do not have the expertise to comment extensively on the 1967 Federal Salary Act and the 1970 Pay Comparability Act. I have reviewed the two pieces of legislation in preparation for this questionnaire. It seems to me that the two bills are truly the foundation for what exists today in regard to the Federal government payroll

systems. There is universal agreement that the current pay system is in need of repair. However, it is folly to assume that the two legislative enactments are no longer relevant. While it is true that they are out-dated, it does not mean that they are no longer relevant. Rather, I would suggest that as the pay system reform moves beyond studies and into concrete suggestions that the two laws be utilized as the foundation that they are. Take those portions which still are useful and effective and improve upon them, and discard those sections which clearly have been overtaken by the events of time. I am confident that by learning from the existing law and improving upon it, the public service employees and the government will benefit.

4. **In recent years, the morale of government employees has sagged. Consequently, commentators have suggested lower worker productivity. Do you see this as a problem? If so, what steps can you take to improve morale and increase productivity?**

My first hand experience has demonstrated to me that employee morale within the Federal workforce has an adverse impact on productivity. This is human nature and certainly not confined to the governmental workplace. However, it is the governmental managers' responsibility to address this issue, and I believe OPM can contribute favorably to a government-wide effort to boost the morale of the workers. I am aware of a number of existing awards programs that can be effectively utilized in improving morale through recognition of excellence, but frankly, I do not believe agencies are taking proper advantage of these programs. As Deputy Director, if I am confirmed, I would encourage personnel managers in the agencies to become familiar with the various awards and recognition programs and take full advantage of them for their employees. I am also aware that President Bush is personally interested in recognizing quality performance among the civil service and that Director Newman will play an instrumental role in capitalizing on the President's desire.

In addition, OPM should be on the cutting edge in development of programs to improve the quality of work life such as day care, job sharing, employment assistance, and health and fitness programs.

Through its executive training programs OPM can further development of an awareness of the need to be more conscious of employee morale and methods of improving it. I am aware that OPM is attempting to improve and expand training programs.

Needless to say, OPM also can make gains in addressing the morale problems of the public employee through the efforts to

improve the working conditions throughout government, both from the monetary and benefits standpoint and the physical space workers occupy.

I am confident that a concerted effort to improve morale among the workforce will result in increased productivity on behalf of the citizens.

5. **Besides retention, the Federal government is faced with an increasingly difficult search to attract qualified employees, particularly those in scientific and high technology areas. What efforts can you undertake as Deputy Director to bolster OPM's recruitment efforts, especially on high school and college campuses?**

Recruitment of career employees is a major challenge as a growing number of Federal workers approach retirement age, the workforce changes, and the pool of workers shrink. I believe the Federal government must continue to make a comprehensive forecast of needs in the coming years and concentrate on recruiting to meet those needs, both the highly technical as well as the support generalists. I understand that OPM has underway a college and university recruitment program, and I know that Director Newman is particularly concerned about improving the image of the public servant, partially to assist in the recruitment of potential employees. As Deputy Director, I would naturally be supportive and would intend to be personally involved in the recruitment efforts of young people.

In addition to recruitment of the "entry-level" employees, I also believe OPM, along with the individual agencies, must develop accurate forecasts of the mid-level employee needs in the near future to replace those retiring and develop recruitment efforts among industry sources for that level of talent as well. While I am confident this type of recruitment effort is underway, if confirmed, I would take a personal interest in such a program, in addition to the high school and college level recruitment efforts.

If the Federal workforce is to successfully respond to the needs of the citizens it is imperative that every effort, led by OPM, be made to bring the "best and the brightest" into government service.

6. **Director Newman has indicated one of her top priorities is reform of the Federal Employee Health Benefits Program. What do you see as the current problems, and potential solutions, to the FEHB program?**

Possibly the most critical challenge facing OPM today is that of the Federal Employee Health Benefits Program. It surely is among the most complex. Director Newman has personally placed review and improvement of the FEHB as one of her top priorities, and as Deputy Director I would follow suit.

I am aware that a number of reviews of the FEHB have taken place and there is little consensus on what measures are needed other than that improvements are necessary. I am not in a position at this time to offer any definitive remedies, and to do so would be premature in light of the process of review that is beginning at OPM.

It is generally recognized there are structural problems with the FEHB as it now is organized, and of course, everyone is concerned about rising costs. It seems to me that a methodical approach by a single unit reviewing the various studies would be the proper route to follow.

It is important that the OPM review start with the premise that the purpose of the FEHB is to provide adequate, economical health benefits to the workforce in a manner that places the Federal government in a competitive position with other employers. As health costs rise nationally it is increasingly important that OPM safe-guard the Federal government's competitive stance as an employer offering benefits to its workforce in a cost-effective manner for employee and employer.

The FEHBP currently covers more than 9 million enrollees, making it the single largest employer-sponsored health benefit program in the United States. There are in excess of 430 health benefit plans offered, in large part due to the large number of local Health Maintenance Organizations (HMO) available for selection.

The recent reviews conducted by Towers, Perrin, Foster and Crosby, Inc. for OPM and the Congressional Research Service study for the House Committee on Government Operations are in-depth studies of this complex system. Each review offers a wide range of possible courses of action. For example, the CRS study offers three broad strategies of reform for consideration: 1) changes to the current program; 2) a new multiple choice plan; and 3) a typical private sector approach.

Because of the complicated nature of the issue and the benefit

package offered to employees, I am reluctant to be specific in offering recommendations for action. However, it seems to me that Director Newman is at the correct starting point by forming a task force to begin the review. An excellent procedure is to use existing studies, such as the Towers, Perrin, Foster & Crosby, Inc. study done for OPM and the GAO/CRS report as the foundation for the review. It is Director Newman's intention that this study result in definitive recommendations that can be reviewed by OPM, submitted to the Administration in conjunction with the Office of Management and Budget for consideration and eventually the President's proposal would be submitted to Congress for action. Prior to completion of the initial task force review it is premature to get into any specific changes.

7. **What oversight procedures, if any, are needed to assure compliance with the merit principles of the Civil Service Reform Act?**

I have not yet spent time at the Office of Personnel Management, so my knowledge of day-to-day operations is somewhat limited. I do know that the area of oversight under the Civil Service Reform Act is one that has gone through several transitions during the first decade of the Act. There was a time, for example, when much of the oversight responsibility was delegated to the individual agencies by OPM. Recently the trend has reversed and it appears that the direction currently is one of more oversight on the part of OPM while allowing the agencies to accomplish the day-to-day personnel activities.

It is clear that the ultimate oversight responsibility for conformance with the merit principles of the CSRA lies with the Office of Personnel Management, the Merit System Protection Board, the Federal Labor Relations Authority, and the Office of Special Counsel. In turn, each agency has the responsibility to ensure that the implementation of the policies comply with merit principles.

I am not prepared to recommend any specific oversight procedures, but I am aware of a number of approaches OPM and agencies have utilized, each with its own unique advantages and disadvantages. In its oversight role, OPM must monitor both the viability of the changes it implements and the manner in which the agencies carry out the legal and regulatory requirements. Procedures for this oversight include methods such as installations assessment visits, personnel management indicator reports, compliance oversight reviews, targeted installation reviews, and agency-led reviews.

In her response to a recent GAO report, Director Newman noted that OPM shares concerns discussed in the report and currently

24-756 - 90 - 4

is taking steps to correct any deficiencies in oversight. OPM has launched a new evaluation program which contains a more intensive and structured review of agency use of delegated authorities. OPM now visits some 200 large installations a year to examine and evaluate compliance as well as conduct targeted reviews involving specific problem areas, including merit system concerns.

It is clear that OPM has a statutory responsibility to ensure that agencies exercise their personnel authorities in accordance with merit system principles. This has been a clear mandate for the Civil Service Commission and now OPM since 1947. Such oversight responsibility should be approached from the standpoint of providing the agencies with firm but constructive guidance to correct problems and make necessary refinements in personnel programs. When necessary, however, OPM should exercise its authority in extraordinary circumstances to suspend, revoke or require restructuring of an agency's use of delegated personnel management authorities when merit system principles are endangered.

As the CSRA enters the second decade, OPM needs to continuously evaluate its own approach to the oversight responsibilities, ensuring that government-wide policies are intact and assure compliance with the merit principles of the CSRA.

8. **What changes, if any, would you propose to make in the Civil Service Reform Act and/or the civil service itself to make it more responsive and effective?**

The Civil Service Reform Act is entering its second decade and is clearly in line for review and updating. The system which came out of the CSRA has operated with positive effectiveness since its origin and those involved over the past decade are to be commended. Now, however, is an excellent opportunity to review the past 10 years and fine-tune those areas which are in need of such action. I would also caution that changes simply for the sake of making changes are not warranted and should be avoided.

As a nominee for the post of Deputy Director, I am not currently in a position to make any definitive recommendations or observations. I have reviewed the Act, and if confirmed, will no doubt begin immediately to work with staff on the daily implementation and responsibilities of the CSRA. During that time and throughout my service in the post I will be constantly reviewing and when appropriate making recommendations on possible improvements in the CSRA.

9. **The movement of both minorities and women into management and the top ranks of the civil service has been painfully slow.**

Director Newman has stated that she plans to review existing minority and women placement programs carefully and implement new ones where needed. She also said that barriers to minorities and women need to be removed through upward mobility programs and greater minority recruitment.

(a) Do you agree with this historical assessment? Please explain.

I am in absolute agreement with this historical assessment, but I am equally convinced that not only does Director Newman intend to take steps to correct the unacceptable situation as it exists today, but that she has the solid backing of the Administration as well. While no one should be promoted or placed into management or top rank positions based solely on gender or ethnic background, we must become increasingly conscious of the need to equally consider every qualified candidate for these posts. There may be legitimate reasons for the existing number of women and minorities in executive government positions today, but our challenge is to ensure that the unacceptable does not become the status quo as we strive to improve the Federal workforce.

(b) As Deputy Director, what steps can you take to encourage and promote the advancement of women and minorities to upper-level civil service positions?

I am aware Director Newman has said she will take the following steps to encourage and promote the advancement of women and minorities: 1) review what has already been determined regarding the policies and programs required to support women and minorities in the workforce, and implement new programs and/or remove barriers where necessary to ensure the maximum opportunities for these groups; and 2) improve upward mobility programs for those in Federal service and increase recruiting efforts, particularly on university campuses, for minority graduates.

As Deputy Director, I can and will support Director Newman's initiatives as well as any existing efforts in this area. But, I also will give the movement of women and minorities into management-level positions my personal commitment and will use every opportunity possible to encourage recruitment and promotion of women and minorities. For example, as I work with regional OPM offices I will, when appropriate, assist in local efforts to recruit women and minorities, such as visiting a campus. While the need to increase emphasis in this area is government-wide, I would hope to be able to assist particularly in increasing the awareness at government

installations throughout the country in addition to our efforts here in the Nation's capital.

10. **In her confirmation hearing, Director Newman stated that she felt random drug testing was justified for certain people in "sensitive" positions in the government.**

Do you support random drug testing for people in "sensitive" government positions?

Random drug testing at the workplace is a complex and emotional issue. I personally have wrestled with the issue for some time; my concerns being centered on how you effectively test for drug use while protecting the individual rights of the worker. I have come to the conclusion that under current circumstances a drug testing program of some type is necessary. I would agree that the logical starting point is with those workers who are in "sensitive" positions within government service. My main concern is that we protect the rights of individuals while we ensure that the government's work is done well.

If so:

(a) **How would you define the term "sensitive"?**

It is my understanding that currently the identification of those positions which are classified "sensitive" is determined by the individual agencies. I believe that at OPM, for example, those currently in that category are the investigators.

I would submit that a broad definition of "sensitive" would include positions which involve the safety of the public or work directly with matters of national security or sensitive information.

(b) **What factors and criteria do you think OPM should use to assist Federal agencies in identifying which positions are "sensitive"?**

I have not discussed this specifically with staff at OPM or Director Newman, but it is my understanding that currently each agency defines those positions which are placed into the "sensitive" category. At this time, such an approach seems to be the most effective method. OPM should serve as a resource on information regarding policy or legal decisions.

11. **The recently released National Drug Control Strategy plan states that Federal agencies should periodically review their**

drug testing programs "as significant new decisions on drug testing are issued by the courts."

(a) What role would OPM play, particularly with respect to Office of National Drug Control Policy, in directing and instituting such a review?

The whole area of drug testing in the workplace is a relatively new arena for the Federal government, and it seems to me there remains a lot to be defined and identified. As I understand it, the major role of OPM in the government's drug testing programs is one of information dissemination. As new information is made available and new policy and legal matters are defined, it has been the responsibility of OPM to provide the agencies with that information. This appears to me to be the logical path of activity for OPM to continue as its role in the recently released National Drug Control Strategy.

(b) How best, in your view, should such a review be carried out?

It is premature for me to offer any definitive recommendations on how the review should be conducted for two reasons: 1) as a nominee I have not been involved in the operations of OPM as of yet and am not familiar with what the agency has been doing in regard to fulfilling this responsibility; and 2) it seems to me that this is a new area of responsibility and the time has been too short to fully define what impact the drug strategy has on the Federal worker.

There is no doubt that this is a major issue with which I will be confronted immediately, if I am confirmed. It would be my intention to proceed cautiously as we delve into an area that is of grave importance to ensuring that the government's work is accomplished correctly, but also that we must be sensitive to individual rights, particularly as it pertains to personnel records, etc.

IV. RELATIONS WITH CONGRESS

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if confirmed?**

   Yes, I agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if confirmed.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee?**

   Yes, I agree without reservation to reply to any reasonable request for information from any duly constituted committee.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names used.)

   Othoniel Armendariz
   Tony Armendariz

2. Position to which nominated:

   Member, Federal Labor Relations Authority

3. Date of nomination:

   September 6, 1989

4. Address: (List current place of residence and office addresses.)

   Residence: 6238 Sweeney
   Corpus Christi, Texas 78413

   Office: University System of South Texas
   P. O. Box 1238
   Kingsville, Texas 78363

5. Date and place of birth:

   Date of Birth: June 15, 1924
   Place of Birth: Ciudad Victoria Tamaulipas, Mexico

6. Marital status: (Include maiden name of wife or husband's name.)

   Marital status: Married
   Spouse: Blanche (Clark) Armendariz

7. Names and ages of children:

   George T. Armendariz - Age: 35
   Cynthia Blanche Armendariz Cockerill - Age: 31
   Rebecca Anne Armendariz - Age: 28

8. Education: List secondary and higher education institutions, dates attended, degree received and date degree granted.

   B.S. - Business Administration - Trinity University
   San Antonio, Texas
   Degree Received: 5/52
   Dates Attended: 9/49 - 5/52

J.D. - St. Mary's University School of Law
San Antonio, Texas
Degree Received: 5/56
Dates Attended: 9/53 - 5/56

MCL - Southern Methodist University - School of Law
Dallas, Texas
Degree Received: 6/60
Dates Attended: 9/59 - 6/60

Universidad Catolica Andres Bello, Facultad de Derecho,
Caracas, Venezuela
Degree Received: None
Dates Attended: 10/61 - 7/65

Certified Public Interpreter, Ministry of Justice,
Republic of Venezuela

Milby High School
Houston, Texas
Degree Received: 5/43
Dates Attended: 9/42 - 5/43

9. Employment record: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

06/78 - Present General Counsel
University System of South Texas
Kingsville, Texas

Provide members of the Board of Directors of the System, the Chancellor, Presidents of Laredo State University, Corpus Christi State University and Texas A&I University as well as other administrative system officers with legal advice concerning federal and state laws affecting higher education in general and the three institutions comprising the System in particular. Give legal opinions on contract and employment matters and coordinate all legal matters and litigation affecting the three institutions with the Office of the State Attorney General.

01/77 - 06/78 Assistant Attorney General
State of Texas
Austin, Texas

Assigned to Education and Civil Rights Section of State and County Affairs Division. Assisted state agencies and universities during EEOC administrative investigatory process, and in conciliation agreement negotiations. Assigned to defend a number of state agencies in trial of education and civil rights cases under Title VII of the Civil

Rights Act of 1964, as amended, and 42 U.S.C. 1981, 1983, 1985 and 1988. Named EEO coordinator for Attorney General's Office. Reviewed and updated Affirmative Action Plan.

02/75 - 12/76 District Counsel
Houston District Office
U.S. Equal Employment Opportunity Commission

Provided District Director, supervisors and staff members with legal advice concerning the application of Title VII of the Civil Rights Act of 1964, and other laws and regulations of EEOC and other federal agencies. Advised and assisted appropriate officials in preparation and issuance of subpoenas and enforced subpoenas issued by EEOC when necessary. Provided legal advice and assistance to aggrieved persons in preparing their cases.

08/73 - 02/75 Assistant Attorney General
State of Texas
Austin, Texas

Assigned to Insurance Banking & Securities Division. Transferred to Anti-Trust and Consumer Protection Division. Investigated, filed and participated in trial of cases in violation of the Texas Deceptive Practices and Consumer Protection Act.

07/72 - 03/73 Executive Vice-President
Homecare de Venezuela, S.A.
Caracas, Venezuela

Set up company's operations. Recruited, trained and motivated sales personnel. Attended to necessary legal requirements and steps to do business in Venezuela.

04/69 - 07/72 Marketing & Distributor Training
Homecare de Mexico, S.A.
Mexico City, Mexico

Assisted in marketing and distributor training and acted as troubleshooter. Also, recruited and trained sales personnel and managed all phases of privately owned cosmetic business.

10/65 - 04/69 President
Venezuelan Operations
Tupperware Division
Rexall Venezuela, CA
Caracas, Venezuela

Performed organizational functions including drafting of Articles of Incorporation and By-laws. Selected warehousing facilities. Hired marketing and sales personnel. Established and implemented training procedures. Instituted administrative and distribution procedures. Responsible for personnel management and budget control. Assisted in organizing and establishing similar operation in Peru, including recruitment of top management personnel.

09/60 - 10/65 Associate Attorney
Law Office of Jesse Guy Benson
Caracas, Venezuela

Handled organization, merger and/or liquidation of corporations. Participated in contract negotiations. Wrote legal opinions. Counseled and advised U.S. Client companies concerning matters of Venezuelan Corporation, Labor and Tax Law.

During this period, I had the opportunity of attending Andres Bello Catholic University School of Law and successfully completed 4 years of the 5_years law school curriculum.

09/59 - 06/60 Student
Southern Methodist University
Dallas, Texas

Pursued studies leading to Master of Comparative Law.

03/58 - 09/59 Associate Attorney
Law Office of Arthur Domangue & Associates
San Antonio, Texas

Engaged in the general practice of law.

09/56 - 03/58 Assistant to President
Compania de Azufre Veracruz, S.A.
Mexico City, Mexico

Wrote procedures for various departments and assisted president of company in administrative matters for sulphur producing company.

09/49 - 07/56 Radio announcer (Spanish) and account executive
KIWW Radio Station
San Antonio, Texas

Worked way through college and law school.

10. Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

None.

11. Business relationships: List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Member, Board of Directors
Texas A&I University Federal Credit Union

Executive Secretary
University System of South Texas Foundation, Inc.

12. Memberships: List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Member
Texas Bar Association (Professional)

Member
Kleberg-Kenedy County Bar Association (Professional)

Member
National Association of College and
University Attorneys (NACUA) (Professional)

Member
Texas Association of State University
Attorneys (TASUA) (Professional)

Member, Board of Director
Corpus Christi Chamber of Commerce (Business)

Member, Board of Director, and Secretary
Kingsville Rotary Club (Civic)

13. Political affiliations and activities:
(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

None.

14. Honors and awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

SMU - Fellowship to obtain Masters of Comparative Law (1959 - 1960)

15. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None

16. Speeches: Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

I do not know why I was chosen for this nomination by the President, but I feel that it may have been in response to my request to serve in this administration, and the President's desire to place qualified minority members in high governmental executive positions.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I firmly believe that the field of labor-management relations demands an objective assessment of the rights of employees, as well as the rights of employers. My experience for many years in the employment and civil rights area has provided me with a strong background that will allow me to apply the guidelines and policies of the Authority in the manner intended by Congress.

B. FUTURE EMPLOYMENT RELATIONS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

C. POTENTIAL CONFLICTS OF INTERESTS

1. Describe all financial arrangements, deferred compensation agreement, and other continuing dealings with business associates, clients or customers.

   None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None.

3. Describe any business relationship, dealing or financial transaction which you have had the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

None anticipated.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details?

No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Yes. My wife and I co-signed a note on a loan from the SBA. The principal debtor defaulted. The SBA sued for collection. The suit was settled out of court. This matter was fully explained and disclosed during the FBI investigation.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

No.

PRE-HEARING QUESTIONS

TONY ARMENDARIZ

A. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority?

   I believe my name came to the attention of the President through the Hispanic Outreach Program set up by the President's transition team. The goal of this program was to obtain a large pool of qualified Hispanics to serve in high executive positions. I was nominated to serve as a Member of the Federal Labor Relations Authority after completing several levels of interviews at the Presidential Personnel Office and after providing a complete biographical and financial background.

2. Were there any conditions, expressed or implied, attached to your nomination?

   There were no conditions attached to the nomination.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as a Member of the FLRA? If so, please describe these commitments?

   No.

4. Is there any issue currently under consideration by the Federal Labor Relations Authority from which you may have to disqualify yourself? If so, please explain.

   Not to my knowledge.

B. FLRA MEMBER'S ROLE AND RESPONSIBILITIES

1. What do you consider to be the mission of the FLRA?

The role and mission of the FLRA is to provide leadership and guidance in the establishment of policies relating to federal service labor-management relations. It must consistently strive to achieve compliance of the rights and obligations provided by the Federal Service Labor-Management Relations Statute to federal employees, federal agencies, and labor organizations which represent such employees. It must promote good labor-management relations with the objective of reducing disputes between labor and management in the federal employment sector.

2. What do you believe to be your basic role and responsibilities as a Member of the FLRA?

I believe that my basic role and responsibilities as a Member of the Federal Labor Relations Authority is to review and render decisions on cases that come before the Authority in a fair, impartial, objective, and expeditious manner.

3. What do you consider to be the major challenges facing the FLRA and how do you propose to address them?

Perhaps one of the major challenges facing the Federal Labor Relations Authority is the processing of cases in order to reduce the backlog that has accumulated during a period of almost a year. With the incoming of the new Members, upon confirmation, this task could be accomplished within a reasonable period of time through diligent attention and dedicated work.

Another challenge may be to maintain consistency and clarity in the decisions issued by the Authority. Consistency should be not only with the decisions issued by the Authority on issues within its jurisdiction, but also with decisions issued by other agencies such as the Merit Systems Protection Board and the National Labor Relations Board on similar issues within their own jurisdictions. This could possibly be accomplished through the use of a tracking system which systematically checks their decisions.

4. What objectives would you like to achieve in this term as a Member of the FLRA?

My main objective will be to work with the Chair and the other Member to accomplish the role, mission, and the goals of the Authority in the most effective and efficient manner.

5. How do you see your relationship and the nature of your duties as they relate to:

(a) the Office of Personnel Management

Unlike the Merit Systems Protection Board, the Authority does not have review responsibilities with respect to the rules and regulations issued by the Office of Personnel Management. However, since the regulations promulgated by the Office of Personnel Management affect all employees in the federal sector there may be times when the Authority may need to decide whether such regulations comply with the statute.

(b) the Merit Systems Protection Board, and

Although both the Authority and the Merit Systems Protection Board have adjudicatory responsibilities, the parties to the proceedings are different. The unions and the agency are generally the real parties before the Authority, whereas the employees of the agency are typically the parties before the Board. There may, however, be some cases where there appears to be overlapping jurisdiction requiring close scrutiny calling for appropriate continuing coordination between the two agencies.

(c) the Office of Special Counsel?

The Office of Special Counsel has investigatory and prosecutorial authority, and functions independently of the Board in a fashion somewhat similar to the Office of General Counsel in the Federal Labor Relations Authority.

The relationship of a Member of the Authority to the Special Counsel is somewhat similar to the one that exists with that of the Office of General Counsel with the exception that, in the case of the General Counsel, he/she must first obtain approval from the Authority in order to exercise certain acts.

C. FEDERAL LABOR RELATIONS AUTHORITY MANAGEMENT

1. In addition to your statutory responsibilities, how can you enhance and promote effective labor-management relations in government and reduce the likelihood of disputes between these parties?

   I believe that the better one understands his/her rights and obligations the less likely one is to create conflicts. Therefore, the dissemination of proper and pertinent information through publications and workshops aimed at different levels of managers and union representatives, as well as employees, may create a climate conducive to better labor-management relations which will reduce disputes between the parties. This approach, though it may appear simplistic, has been used by other agencies, such as the Equal Employment Opportunity Commission, with effective results.

2. What actions will you take to ensure consistency between the decisions rendered by the FLRA and those of the Merit Systems Protection Board or the Office of Special Counsel in areas, such as unfair labor practices or discrimination, which may involve overlapping jurisdiction?

   In the areas involving overlapping jurisdiction between the decisions rendered by the Federal Labor Relations Authority and the Merit Systems Protection Board, or the Office of Special Counsel, consistency may be ensured by monitoring the decisions and maintaining coordination with the Merit Systems Protection Board in those areas.

3. Do you believe that labor-management relations in the federal government should reflect, as closely as possible, the practice and precedents of those in the private sector? What do you see as the similarities and differences between the two?

   Yes. I believe that labor-management relations in the federal government should reflect, as closely as possible, the practice and precedents in the private sector to the extent permitted by the enabling legislation affecting each sector.

   While both the National Labor Relations Board and the Federal Labor Relations Authority have adjudicatory responsibilities and the Federal Labor Relations Authority was somewhat patterned after the National

Labor Relations Board for the fair resolution of labor-management disputes, they differ in that the private sector was given the right to strike as the last step to end bargaining disputes. This strong tool has been used effectively by Unions to bargain such matters as wages and other benefits such as insurance, leave time, holidays, retirement, etc. This right was not provided to employees in the federal sector.

4. The FLRA, under Chairman Calhoun, reduced the average age of cases from over two years to six months. Since Mr. Calhoun's resignation last October, the FLRA has been without a working quorum and, consequently, the backlog of cases has increased.

How do you plan to address this situation and what time frame and objectives do you have in mind?

At this time, I have no particular plan that I can recommend except to pledge my diligent efforts and dedicated work to reduce the backlog as expeditiously as possible, and to not only reach the average age of cases set by the Ex-Chairman Calhoun but to surpass that goal.

5. What do you think is the proper relationship between the FLRA Members and the General Counsel?

Although the General Counsel is an integral part of the Federal Labor Relations Authority, he/she functions independently from the Members in the discharge of the duties and responsibilities of his/her office. When the General Counsel acts in his/her role of investigator and prosecutor in the appropriate cases, the relationship of the Members to the General Counsel should be that which exists between a judge and a prosecutor. Not so in other instances where the General Counsel must obtain permission from the Authority before taking action as in cases concerning injunctive relief.

6. Some analysts have questioned both the adequacy and specificity of FLRA remedies issued over the years in unfair labor practice cases.

(a) How do you respond to this assertion?

At this time I am not familiar with the basis for the assertions of lack of adequacy and specificity of the Federal Labor Relations Authority remedies issued over the years in unfair

labor practice cases. I can, however, assure you that I will strive to ensure that any decision I approve is as adequate and specific as possible within the context of the issue at hand.

(b) In which types of cases and under what circumstances would you consider it appropriate to order status quo ante relief?

The statute gives the Authority wide discretion in providing any remedial action it considers appropriate for any violation of its provisions. In those cases involving violation of the duty to bargain over impact and implementation, the Authority may, or may not, order status quo ante relief. This relief may apply after a careful balancing of the nature and circumstances of the violation vis-a-vis the degree of disruption in the government operations caused by such remedy and based, among other thing, on the following inquiries made by the Authority:

(1) whether proper notice was given to the union concerning the action taken;

(2) whether the union requested bargaining in the procedures to be followed by the agency in implementing the action or change;

(3) whether there was willfulness in the agency's conduct in failing or refusing to discharge its bargaining duty under the statute;

(4) whether, and to what degree, the remedy would disrupt the agency's operations; and,

(5) on the nature and extent of the impact on the employees adversely affected.

(c) In which types of cases and under what circumstances would you consider it appropriate to seek a "retroactive bargaining order"?

In unfair labor practice cases where the issue is lack of notice and refusal to bargain in good faith, it may be appropriate to allow as a remedy a "retroactive bargaining order" if it does not unduly restrict the parties and allows the proper flexibility to reach an agreement without unnecessarily disrupting or impairing the efficiency and effectiveness of the agency's operations, if such remedy best serves the purpose and policies of the statute.

7. Commentators have suggested that some of the decisions rendered by the Authority during its first years of existence may be flawed. What standards of review and factors will you consider in evaluating whether certain FLRA practices, decided under a different composition of the Authority, are flawed?

Some factors and standards of review which could be considered in order to avoid flawed decisions would be to closely follow the precedents set by the courts and other agencies, such as the National Labor Relations Board and the Merit Systems Protection Board, and to maintain clarity and consistency in the decisions consonant with the issues involved.

8. A recent District of Columbia Circuit Court case (Dept. of Air Force, Sacramento Air Logistics Center v. FLRA) held that the FLRA, by regulation, could not require federal agencies to pay travel expenses and per diems to employees subpoenaed to appear at FLRA proceedings.

(a) What are your views on this decision?

The decision by the District of Columbia Circuit Court to not allow the Federal Labor Relations Authority to require, by regulation, that federal agencies pay travel expenses and per diems to employees subpoenaed to appear at the Federal Labor Relations Authority proceedings, places an additional burden on the subpoenaed employees, and leaves the question open as to who would pay these expenses.

(b) How would you propose the Authority facilitate the appearance of such witnesses to FLRA proceedings?

Some alternatives that could be considered by the Authority in facilitating appearance of such witnesses to the Federal Labor Relations Authority proceedings are:

(1) consideration of republishing the pertinent regulations;

(2) consideration of recommending to Congress to change the statute and allow the Authority to make such request to federal agencies;

(3) consideration of requesting the labor unions to assist the employee in meeting this financial obligation; and,

(4) consideration of the payment of these expenses by the Federal Labor Relations Authority.

9. Section 7123(c) of the Federal Service Labor-Management Relations statute provides that upon the filing of a petition by an aggrieved person or the FLRA, "the filing shall not operate as a stay of the Authority's order unless the court specifically order the stay".

How would you interpret this provision and what is-- or has been-- its practical effect?

I interpret this provision as giving recognition of full force and effect to the final orders of the Authority until modified, set aside in whole or in part, or until a stay is specifically ordered by the court, thus giving the orders the effect of permanency.

10. Under Authority past practice in cases involving exceptions to arbitration awards the FLRA can issue an order denying the exceptions. If the losing party subsequently refuses to comply with the arbitration award, the Authority has required the winner of the award to file an unfair labor practice which the FLRA General Counsel must prosecute. At that point, the Authority may then petition for enforcement.

Some have recommended this process can be streamlined if the Authority were to petition the Courts directly for enforcement of such an award rather than awaiting an action by the General Counsel. What are your views?

Filing exceptions to an award before an administrative agency is unique, and while it may appear that the process is lengthy in time, petitioning directly to the courts for enforcement may not shorten that time to such a degree that the enforcement will be expedited much sooner due to crowded dockets presently existing before the courts.

11. The Authority has chosen to decide its major issues on a case-by-case basis. This has entailed extensive litigation over such matters as a union's right to home addresses of its bargaining unit members and travel and per diem rights of union representatives.

The Authority has the power to issue "major policy guidance/ interpretations" to define whole areas of the law so that an issue

which applies to several agencies may be fully resolved in one case. This was done in establishing the right to official time for supplemental negotiations.

Given your case load and budgetary demands, what are your thoughts on when and how this broad authority should be utilized?

Whether compliance with the statute would be better accomplished by deciding major issues on a case-by-case basis as against policy decisions, is a question of considerable importance requiring close scrutiny and the attention, study, and agreement of all the Members of the Authority. While I recognize the importance of this issue, I have no specific suggestions at this time.

D. THE CIVIL SERVICE REFORM ACT

1. What do you feel are the most important principles of the Civil Service Reform Act?

   Through the creation of the Federal Labor Relations Authority, the Merit Systems Protection Board, and the Office of Personnel Management, the Act has encompassed the principles of fairness in the work place, non-discrimination, and pay for performance and merit. It is designed to provide job security as well as improvement in the effectiveness and efficiency of government.

2. How would you describe the level of protection which the Civil Service Reform Act provides to federal employees?

   I feel that the Act provides appropriate protection by balancing the interests of unions, federal employees, and employers. It provides the mechanism to accomplish its purpose and goals. However, with the influx of new issues and circumstances in the work place, the need for adjustments may arise.

3. Do you see any particular change(s) in the Act needed to help clarify and carry out the goals of this legislation?

   At this particular time I do not feel I can suggest any changes which will clarify and carry out the goals of this legislation without hands on experience.

E. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

   Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

   Yes.

POST-HEARING QUESTIONS FROM CHAIRMAN GLENN

FOR

TONY ARMENDARIZ

1. What are your views on pay bargaining?

I understand that the issue of whether proposals concerning the pay of Federal employees are negotiable has been controversial and that the U.S. Supreme Court recently has granted a petition for a writ of certiorari in a case concerning this issue. I am not, however, sufficiently familiar with the issue of pay bargaining to provide my views on the issue at this time. I pledge that if I am confirmed, I will evaluate this issue carefully and will attempt to ensure that decisions issued by the Authority concerning this issue, as well as all other issues, are consistent with the Federal Service Labor-Management Relations Statute.

2. The FLRA has had a high percentage of cases reversed in the Courts of Appeal. To what do you attribute this result and what can be done to improve the FLRA's track record?

I am not familiar with the numbers or percentages of Authority decisions which have been reversed in the U.S. Courts of Appeals. I am, therefore, unable to attribute reversals to specific reasons. Overall, I would suggest that Authority decisions should be clearly written so as to decide all relevant issues and should be consistent with Authority precedent as well as any relevant decisions by the courts or other administrative agencies. Any departures from precedent should be clearly and adequately explained. If I am confirmed as a Member of the Authority, I will examine this issue and will work with the Chairman and the other Member to make any needed improvements.

PAMELA TALKIN

BIOGRAPHICAL AND FINANCIAL INFORMATION

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Pamela Talkin
   Pamela Hoffman (1/68-2/80)

2. **Position to which nominated:**

   Member, Federal Labor Relations Authority

3. **Date of nomination:**

   July 31, 1989

4. **Address:** (List current place of residence and office addresses.)

   Home: 2101 N Street, N.W.
   Washington, D.C. 20037

   Office: Equal Employment Opportunity Commission
   Office of the Chairman
   1801 L Street, N.W.
   Washington, D.C. 20507

   I also maintain a residence at:

   1950 Jones Street
   San Francisco, CA 94133

5. **Date and place of birth:**

   August 26, 1947, Brooklyn, NY

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Divorced

7. **Names and ages of children:**

   None

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Brooklyn College, City University of New York
September 1964 - February 1968
B.A., 1968

Brooklyn College, City University of New York
February 1968 - February 1971
M.A., 1971

Brooklyn College, City University of New York
February 1971 - November 1972
Post graduate studies, no degree

John F. Kennedy School of Government
Harvard University
Program for Senior Managers in Government
August 1987

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.

October 1986 - Present
Chief of Staff
Equal Employment Opportunity Commission
Washington, D.C.

August 1984 - March 1985 (Detail from National Labor Relations Board)
Special Assistant to Commissioner Fred Alvarez
Equal Employment Opportunity Commission
Washington, D.C.

July 1973 - October 1986
July 1973 - May 1981 - Investigator
May 1981 - January 1984 - Supervisory Compliance Officer
January 1984 - October 1986 - Assistant Regional Director
National Labor Relations Board, Region 20
San Francisco, California

July 1971 - September 1971 (Summer employment)
Interviewer Crew Chief - interviewed members of my employer regarding their fringe benefits and working conditions.
Local 1199, Hospital Workers Union
New York, New York

September 1968 - November 1972
Spanish Teacher, Grade Advisor
Bay Ridge High School (New York City Board of Education)
Brooklyn, New York

February 1968 - June 1968
Math Teacher
Brooklyn Technical High School (New York City Board of Education)
Brooklyn, New York

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.

1978 — Developed and implemented investigative training program for State of California, Agricultural Labor Relations Board.

7/77 - 5/81 — President, National Labor Relations Board Union

11. **Business relationships:** List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Member, Board of Directors, BAART, San Francisco, CA - a non-profit organization engaged in the operation of drug treatment programs, September 1981 - present.

12. **Memberships:** List all memberships and offices held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

None

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 15 years.

None

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

New York State Regents Scholarship

Laurel Branch

SES Outstanding Performance Award and Bonus - 1987, 1988

Chairman's Organizational Performance Award - 1988

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None

16. **Speeches:** Provide the Committee with three copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

It is my belief that I was chosen for this nomination because of my experience, knowledge, skills and abilities in labor and employment law and labor relations.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that my extensive experience at the National Labor Relations Board and Equal Employment Opportunity Commission enforcing federal laws governing labor relations and prohibiting employment discrimination; my knowledge of the laws, policies and procedures affecting government operations and employment; my experience in public sector labor relations, both as National President of a Federal employee union and as the top career manager of a Federal agency; and my demonstrated commitment to government service make me uniquely qualified for the position for which I have been nominated.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business associations or business organizations if you are confirmed by the Senate?

Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   None

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   None to my knowledge.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None to my knowledge.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   In my capacity as Chief of Staff of the U.S. Equal Employment Opportunity Commission, I was occasionally requested by Senate and House committee staff to comment upon and propose modifications to legislative initiatives.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide copies of any trust or other agreements.)

I will resign from the Board of BAART, as the law requires that a member of the Federal Labor Relations Authority engage in no outside activity. Should any other potential conflicts of interest arise I will consult with appropriate agency and government ethics officers and will follow their advice regarding recusal or other necessary action.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

Along with several other EEOC officials, I was once named as a defendant in a lawsuit filed against the agency by a former employee. My name was subsequently amended out of the complaint.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details?

No

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

Not to my knowledge.

PRE-HEARING QUESTIONS AND RESPONSES

PAMELA TALKIN

A. NOMINATION PROCESS AND POTENTIAL CONFLICTS

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority?

It is my belief that I was nominated to serve as a Member of the Federal Labor Relations Authority because of my experience in and knowledge of labor and employment law and labor relations, and my background as an employee and top manager in the Federal government.

2. Were there any conditions, expressed or implied, attached to your nomination?

There were no expressed conditions attached to my nomination. I feel that it is implied that, if confirmed, I must serve well, with integrity and diligence.

3. Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as a Member of the FLRA? If so, please describe these commitments.

I have made no such commitments.

4. Is there any issue currently under consideration by the Federal Labor Relations Authority from which you may have to disqualify yourself? If so, please explain.

There are currently five matters (exceptions to two arbitration awards, three unfair labor practice charges) pending before the FLRA General Counsel or the Authority which involve my current employer.

B. FLRA MEMBER'S ROLE AND RESPONSIBILITIES

1. What do you consider to be the mission of the FLRA?

I believe that the mission of the FLRA is to provide leadership and guidance in the area of labor-management relations in the Federal sector through the administration and enforcement of the Federal Service Labor-Management Relations Statute.

2. What do you believe to be your basic role and responsibilities as a Member of the FLRA?

As one of three members of a collegial body, I believe that the basic role of a Member of the FLRA is to work with the other members to ensure that we carry out the mission of the agency by rendering timely, impartial decisions that are well-reasoned and clearly written. I believe that FLRA Members must not only provide leadership and give clear guidance in their decisions interpreting the Federal Service Labor-Management Statute, but that they must be available to speak to Federal Sector managers, unions, employees and employee organizations in order to educate and assist them in understanding their rights and responsibilities and in establishing effective relationships which ensure efficient public service and protect employee rights.

3. What do you consider to be the major challenges facing the FLRA and how do you propose to address them?

The major challenge facing the FLRA is to significantly reduce the number of cases that are now awaiting decision. At the same time the FLRA Members must take extreme care not to sacrifice clarity, quality, and thoroughness in their analysis and decision-writing. I will address these challenges with commitment, hard work and long hours on my part and by establishing a good working relationship with my staff, giving them clear direction as to my expectations, standards and priorities.

4. What objectives would you like to achieve in this term as a Member of the FLRA?

I would like to make a significant contribution toward the elimination of the backlog of cases that has developed while the FLRA was without a quorum. It is my hope that when my term expires next year, the FLRA will be current in its work and will once again be issuing decisions expeditiously.

5. How do you see your relationship and the nature of your duties as they relate to:

(a) the Office of Personnel Management

The Office of Personnel Management (OPM) is the personnel manager for the Executive Branch of the Federal government. In this role it establishes and implements various nationwide personnel management policies and advises Federal departments and agencies on personnel matters, including labor relations issues. The FLRA may be called upon to adjudicate disputes arising over the substance or implementation of such OPM policies and guidance. OPM may participate as amicus curiae in these cases or OPM may itself be a party in a case before the Authority. The Authority may also request an advisory opinion from the Director of OPM concerning the interpretation of rules, regulations or policy directives issued by OPM in connection with a matter before the FLRA.

(b) the Merit Systems Protection Board, and

Under the Civil Service Reform Act the Merit Systems Protection Board and the FLRA have been delegated complementary functions and responsibilities for review and adjudication regarding federal sector employment matters. Each agency may look to guidance offered by the other. While the MSPB, among other responsibilities, administers the law concerning adverse actions for misconduct or unsatisfactory work performance and adjudicates alleged prohibited personnel practices, some cases involving discipline of employees, which also present issues covered by the Statute, might come before either MSPB or FLRA, either through an appeal to the former or the review of an arbitration award or unfair labor practice proceeding by the latter. As an FLRA Member I will be mindful of this possibility and I will be alert to any jurisdictional problems presented by these cases. Moreover, I intend to become fully knowledgeable of MSPB precedent and keep informed of new developments.

(c) the Office of Special Counsel?

The Office of Special Counsel is charged with the investigation and prosecution of certain prohibited personnel practices, including protecting whistleblowers from reprisal for their protected activities. As there may be occasions where there is an overlap of jurisdiction betweeen the FLRA and OSC, there should be some communication between the OSC and FLRA to avoid any problems in this area. This is particularly true at this time when the role and procedures of OSC may be changing as a result of the Whistleblower Protection Act of 1989.

C. FEDERAL LABOR RELATIONS AUTHORITY MANAGEMENT

1. In addition to your statutory responsibilities, how can you enhance and promote effective labor-management relations in government and reduce the likelihood of disputes between these parties?

I believe that it is critical for efficient and effective government that labor-management relationships be productive, that disputes be prevented and, when they cannot be prevented, that they be resolved as quickly as possible.

Many labor disputes can be prevented by the manner in which the FLRA and its members carry out their statutory responsibilities. Prompt, fair, consistent, clear, well-reasoned decisions will both enhance labor-management relations and reduce the number of disputes by providing guidance, stability and predictability in this area.

The FLRA through its headquarters and regional offices, can act as a clearinghouse and resource for information not only on the state of the law, but also on the establishment and maintenance of harmonious labor-management relations and the prevention and resolution of disputes.

To the extent permitted by law and resources, FLRA officials should engage in active outreach in providing educational and, where appropriate, technical assistance to employees, their representatives and their managers in order to familiarize them with their rights and responsibilities under the law and to affirmatively guide them on how to achieve better relationships and amicably resolve disputes.

It is my sincerely held opinion that sound labor-management relations in the federal government are in the public interest and form the basis for a significant contribution to better and more efficient government. I am certain that there are many more ways in which the FLRA, including its Members, can foster productive relations between management and labor organizations. If confirmed, I intend to give this question a great deal more thought as I gain a better knowledge and understanding of the problems that might exist.

2. What actions will you take to ensure consistency between the decisions rendered by the FLRA and those of the Merit Systems Protection Board and the Office of Special Counsel in areas, such as unfair labor practices or discrimination, which may involve overlapping jurisdiction?

I will ensure that I am fully knowledgeable of the policies, precedents and developing law of MSPB and OSC and will attempt to achieve consistency in such cases to the extent that I believe the Statute and its legislative history permit.

3. Do you believe that labor-management relations in the federal government should reflect, as closely as possible, the practice and precedents of those in the private sector?

What do you see as the similarities and differences between the two?

To the extent possible and practicable, within the parameters of the Federal Service Labor-Management Relations Statute, labor-management relations in the federal government should reflect the practice and precedents of those in the private sector. Congress recognized this when, in drafting the Statute, it modeled many provisions after those in the National Labor Relations Act. However, Congress also recognized the "special requirements and needs" of the government in establishing procedures and prescribing certain rights and obligations of Federal employees.

The similarities between the public and private sectors are basic and fundamental. They include the protection of the rights of an employee to engage, or refrain from engaging, in union activities and to be free from reprisal for so

doing, the prohibition against management and labor interfering with employees in the exercise of their rights, and the requirement that agencies and the labor organizations representing their employees bargain in good faith.

However, unlike the private sector, government decisions are controlled less by market forces and more by the need to serve the public interest. Many aspects of government operations and personnel matters in the federal workplace are controlled by government-wide regulation and are not amenable to collective bargaining. While Congress recognized that collective bargaining is in the public interest, it sought to balance collective bargaining rights with the particular requirements of federal service.

The Statute provides for these realities by defining management rights and conditions of employment, excluding from bargaining matters prescribed by law and regulation, providing for official time for union negotiations, prohibiting work stoppages and providing various requirements and mechanisms for the resolution of grievances, disputes, bargaining impasses and issues of negotiability.

4. The FLRA, under Chairman Calhoun, reduced the average age of cases from over two years to six months. Since Mr. Calhoun's resignation last October, the FLRA has been without a working quorum and, consequently, the backlog of cases has increased.

How do you plan to address this situation and what time frame and objectives do you have in mind?

It is my understanding that the staffs of Authority Members have been diligently working at drafting decisions even in the absence of a quorum. I intend to "roll up my sleeves" and get to work. I will analyze the pending workload and give clear instructions to staff as to my priorities, policy views and standards so that they can review and revise earlier drafts and continue to make new recommendations to me. I will read the existing drafts, along with the underlying records and supporting briefs and materials, and do the appropriate research, analysis, writing and editing, spending as much time as necessary to get the job done right.

As I am not familiar with the nature and complexity of the pending cases, I cannot state with specificity my time frames or objectives. However, I will endeavor to reduce the backlog and average age of cases to the lowest possible levels in the least amount of time.

5. What do you think is the proper relationship between the FLRA Members and the General Counsel?

The FLRA Members and the General Counsel are all appointed by the President by and with the advice and consent of the Senate. The General Counsel's function is basically prosecutorial while the Authority is an adjudicatory body. The General Counsel has the independent responsibility to investigate alleged unfair labor practices and to file and prosecute unfair labor practice complaints. The Authority has delegated to the General Counsel the responsibility for processing representation cases in the Regional Offices. The Authority considers appeals of Administrative Law Judge decisions on matters prosecuted by the General Counsel and may also review actions on representation cases taken by employees reporting to the General Counsel.

It is my view that as an FLRA Member my relationship with the General Counsel should be cordial on a personal basis and absolutely arms length on a professional one. The General Counsel has complete independence to prosecute cases before the Authority, and has the obligation to present evidence and put forth her theory on the issues involved. Through FLRA decisions, clear guidance must be given to the General Counsel as to the Authority's interpretation of the law.

The General Counsel has direct authority over and responsibility for employees of her office as well as employees in Regional Offices of the FLRA. The Chairman is the chief executive and administrative officer of the Authority. I do not know what role, if any, FLRA Members have with respect to administrative matters in the areas of budget and staff. As I am not sufficiently familiar with the internal operations of the FLRA, I cannot comment upon the relationship between the General Counsel and FLRA members in this area.

6. Some analysts have questioned both the adequacy and specificity of FLRA remedies issued over the years in unfair labor practice cases.

(a) How do you respond to this assertion?

As I have not been advised of the specific questions raised by the various analysts, I am unable to comment on their assertions. However, I can state that I believe that the basic effectiveness of FLRA's law enforcement program is dependent upon securing prompt, comprehensive and complete relief for those affected by statutory violations. Remedial measures must also be designed and enforced so as to prevent recurrence of similar unfair labor practices.

The FLRA has broad authority to fashion remedial orders in cases where it finds that unfair labor practices have been committed. If confirmed, I will attempt to carefully tailor proposed remedial orders that will, to the extent possible, specifically and adequately address the violations committed and fulfill the purposes and policies of the Statute.

(b) In which types of cases and under what circumstances would you consider it appropriate to order status quo ante relief?

I believe that it is appropriate to consider status quo ante relief in all cases where an unfair labor practice has been committed and the conditions that existed prior to the violation have been changed by or as a result of the commission of the unfair labor practice. This would be true in all types of cases, including those involving discrimination, unilateral changes or a failure to bargain.

However, the determination of whether to order such relief is often dependent upon the unique circumstances and factual pattern of a given situation. For example, the actual circumstances of a particular case may make complete restoration of the status quo impossible, speculative, or clearly inappropriate. In such situations, depending upon the specific circumstances and issues, other remedial measures, including bargaining orders, back pay and other forms of individual and institutional relief may have to be considered in order to restore the situation, as nearly

as possible, to that which would have obtained but for the unfair labor practices. In other cases, such as where temporary practices have been discontinued, or where the parties have reached some accommodation, status quo ante relief might be moot.

I can only reiterate that I am firmly committed to the concept of full relief and will attempt to apply that policy within the statutory framework of protecting employee rights, while preserving collective bargaining and the overall goal of efficient government.

(c) In which types of cases and under what circumstances would you consider it appropriate to seek a "retroactive bargaining order"?

I believe that the parties to a dispute should be free, within appropriate legal and regulatory restrictions, to agree voluntarily to give retroactive effect to any accord reached.

However, similar to the complexity of the questions surrounding when and in what circumstances status quo ante relief should be ordered, the policy issues surrounding retroactive bargaining orders are difficult ones and the law on the matter is unsettled (see National Treasury Employees Union v. FLRA, 856 F.2d 293 (D.C. Cir. 1988). At a minimum I believe that a retroactive bargaining order should be sought in circumstances already deemed appropriate by the FLRA, i.e., in cases involving a refusal to bargain over specific proposals which had previously been held by the Authority to be within the duty to bargain or in cases where there has been a refusal to implement the specific terms of an interest arbitration award to which timely exceptions were not filed. I believe this rationale would be equally applicable to a failure to bargain over matters that an agency knew were clearly negotiable. Retroactive application of the results of bargaining might also be appropriate in computing back pay awards in cases where the FLRA concludes that there has been a refusal to bargain over "impact and implementation" that has resulted in the withdrawal or reduction in the pay, allowances or differentials of affected employees.

Recognizing that retroactive bargaining orders are an available remedy, if confirmed, I will consider their application in the circumstances described above as well as in other appropriate cases.

7. Commentators have suggested that some of the decisions rendered by the Authority during its first years of existence may be flawed. What standards of review and factors will you consider in evaluating whether certain FLRA practices, decided under a different composition of the Authority, are flawed?

Consistency and predictability in FLRA decision-making is essential to stability in labor-management relations in the federal service. I believe that one must respect the doctrine of stare decisis and act with extreme care and deliberativeness when departing from or changing established precedent. Nonetheless, the Authority is always engaged in the process of evolving the law and certain policies or approaches may need to be re-examined, modified or abandoned.

In determining whether certain prior decisions were flawed, I would look to the plain language of the Statute, its legislative history, decisions of the various Courts of Appeals, my own understanding of the realities of government and labor relations, and the need to balance the rights of employees with the need for efficient government. Were I to come to the conclusion that a precedent must be changed, I would clearly set forth my rationale for doing so.

8. A recent District of Columbia Circuit Court case (Dept. of Air Force, Sacramento Air Logistics Center v. FLRA) held that the FLRA, by regulation, could not require federal agencies to pay travel expenses and per diems to employees subpoenaed to appear at FLRA proceedings.

(a) What are your views on this decision?

While at odds with the FLRA's regulation in this area, I believe the Court's interpretation of the Statute is consistent with the Supreme Court's holding in Bureau of Alcohol, Tobacco, and Firearms v. FLRA, 464 U.S. 89 (1983).

b) How would you propose the Authority facilitate the appearance of such witnesses to FLRA proceedings?

Based upon my experience at the National Labor Relations Board, I would propose that FLRA proceedings be held at sites located as near as possible to the workplaces of the witnesses to be called. In addition, the FLRA must carefully consider which witnesses it should subpoena and it should organize the presentation of a case to allow for the most efficient and judicious use of such witnesses without diminishing the FLRA's ability to develop the necessary record.

Despite our best efforts to efficiently faciliate the appearance of witnesses, the costs to the FLRA will significantly increase if it is to pay the travel and per diem expenses for witnesses it must subpoena. The FLRA, through its budget submissions to the Office of Management and Budget, must seek the additional funds required for this increased expenditure and, with all due respect, Congress should also ensure that sufficient funds are available for this purpose so that the FLRA's mission and program are not adversely affected.

9. Section 7123(c) of the Federal Service Labor-Management Relations statute provides that upon the filing of a petition by an aggrieved person or the FLRA, "the filing shall not operate as a stay of the Authority's order unless the court specifically orders the stay."

How would you interpret this provision and what is--or has been--its practical effect?

I would interpret this provision to mean that although a party files a petition for review with a Circuit Court of Appeals or the FLRA files a petition for enforcement of an order of the FLRA, the provisions of any remedial order must be complied with absent a specific order from the Court granting a stay of that order and that liability continues to accrue. Similarly, should the FLRA order provide for a dismissal of a complaint, the Respondent is free to act unless a stay is granted.

I do not know what the practical effect has been. It has been my experience with similar provisions under the National Labor Relations Act that Respondents often disregard this provision, thereby unnecessarily delaying compliance with remedial orders. On the other hand, although much less likely, confusion may be created when Respondents take action and comply only to be later relieved of that obligation when the Court refuses to enforce an FLRA order.

10. Under Authority past practice in cases involving exceptions to arbitration awards, the FLRA can issue an order denying the exceptions. If the losing party subsequently refuses to comply with the arbitration award, the Authority has required the winner of the award to file an unfair labor practice which the FLRA General Counsel must prosecute. At that point, the Authority may then petition for enforcement.

Some have recommended this process can be streamlined if the Authority were to petition the Courts directly for enforcement of such an award rather than awaiting an action by the General Counsel. What are your views?

As I have stated, I believe that prompt, final resolutions of disputes are an essential element of any labor-management relations program. If confirmed, I would examine how the existing process has worked and would explore options available within the statutory framework which would, where necessary, provide for expedited enforcement of arbitration awards.

11. The Authority has chosen to decide its major issues on a case-by-case basis. This has entailed extensive litigation over such matters as a union's right to home addresses of its bargaining unit members and travel and per diem rights of union representatives.

The Authority has the power to issue "major policy guidance/interpretations" to define whole areas of the law so that an issue which applies to several agencies may be fully resolved in one case. This was done in establishing the right to official time for supplemental negotiations.

Given your caseload and budgetary demands, what are your thoughts on when and how this broad authority should be utilized?

I believe this authority should be used to decide only major issues affecting a significant number cases, agencies and/or employees and only where it is likely that the number of disputes will be reduced by such guidance. In matters where many varied factual circumstances could affect the outcome of a case, such an approach would not be appropriate despite the importance of the issue.

General statements of policy or guidance should be issued after all interested individuals and groups have had the opportunity to provide comment to the Authority on the matter to be decided. Such Authority statements should set forth the rationale for the conclusions reached and should be clear as to the issues and factual situations covered.

D. THE CIVIL SERVICE REFORM ACT

1. What do you feel are the most important principles of the Civil Service Reform Act?

The most important principles of the Civil Service Reform Act are set forth in Section 3 of the Act which delineates the findings and statement of purpose of Congress. The legislation was enacted to ensure that the people of the United States are provided with a "competent, honest and productive Federal workforce reflective of the Nation's diversity". Congress felt that this principle could best be accomplished through the operation of clearly defined merit system principles among employees who would be free to bargain collectively through representatives of their own choosing and who would be protected from enunciated prohibited personnel practices and other inappropriate actions deemed to be inconsistent with the implementation of such merit systems.

To facilitate the balance envisioned between management rights and employees protections, the Federal Service Labor-Management Relations Statute was included as Title VII of the Civil Service Reform Act, the Senior Executive Service was created, and pay for performance and streamlined personnel procedures were to be designed. OPM, FLRA, MSPB and the Office Special Counsel were created to implement this major initiative.

2. How would you describe the level of protection which the Civil Service Reform Act provides to federal employees?

Based upon my current knowledge of the Civil Service Reform Act and the Whistlebower Protection Act of 1989, I would conclude that the legislation generally provides a wide range of protections for federal employees. However, I would hope to study further the precedents, policies and procedures that have evolved in the implementation of the legislation in order to determine whether, in practice, employees are afforded an appropriate level of protection.

3. Do you see any particular change(s) in the Act needed to help clarify and carry out the goals of this legislation?

I do not feel that I have had sufficient specific experience with the Civil Service Reform Act to recommend any changes at this time.

E. RELATIONS WITH CONGRESS

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if confirmed?

Yes

RESPONSES TO

POST-HEARING QUESTIONS FROM CHAIRMAN GLENN

FOR

PAMELA TALKIN

1. What are your views on pay bargaining?

The wages and fringe benefits of most Federal employees are established and controlled by law and, as such, they are not negotiable. However, these laws do not apply uniformly to all Federal employees and there are situations where matters concerning the nature or amount of the wages or fringe benefits are left to the discretion of the employing agencies.

Questions regarding negotiability in this area have come before the Authority and the Courts involving diverse issues such as hazardous duty and environmental differential pay, incentive pay and awards, holidays and premiums, travel and expenses, overtime, pay for prevailing rate employees, and employees of FDIC, the Bureau of Engraving and Printing and the Nuclear Regulatory Commission. The Supreme Court has recently granted a petition for certiorari in Fort Stewart Schools regarding the negotiability of a salary increase for teachers of children of military and civilian personnel.

The questions raised in this area are quite complicated and diverse and the disposition of the issues presented is often dependent upon the specific factual circumstances of any given case. Accordingly, I am unable to state a general view on this matter. I do, however, assure you that, if confirmed, I will pay careful attention to resolving these issues.

2. The FLRA has had a high percentage of cases reversed in the courts of appeal. To what do you attribute this result and what can be done to improve the FLRA's track record?

It is my understanding that the Courts of Appeal have at times criticized FLRA decisions for their inconsistency or their lack of a clearly stated and supported rationale for the conclusions reached. I do not know to what this is attributable. I assume that it is due, in part, to the relative newness and unsettled nature of the law and the previous lack of a steady quorum and stable leadership at the Authority.

If my colleagues and I are confirmed, we will have a full panel which will operate under the able leadership of an

experienced Chairman. I believe that, conscious of the Court's opinions, we are all committed to working in a collegial atmosphere in which we thoroughly consider, carefully analyze and properly and consistently decide all matters so that they will withstand judicial scrutiny.

STATEMENT BY RONALD G. HEIN

NOMINATED TO BE UNITED STATES MARSHAL

FOR THE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

October 27, 1989

Mr. Chairman and Members of the Committee:

I am honored to be here today as the President's nominee for the new position of United States Marshal for the Superior Court of the District of Columbia. As the Committee is well aware, this position was created by the Anti-Drug Abuse Act of 1988 to address the distinct functions performed by the United States Marshals Service in the District of Columbia, which are unique among the Service's 94 districts across the nation.

In the District of Columbia, as in all other districts, the Marshals Service provides support and executes court orders for the Federal courts, including the United States District Court and Courts of Appeals. In addition, the Service provides essential law enforcement support for the District of Columbia's "municipal court" -- the Superior Court -- functioning not unlike the office of sheriff at the local level in other jurisdictions.

The law enforcement services required by the municipal and Federal court systems in the District are fundamentally different in nature. Moreover, the Superior Court workload exceeds that of even the largest Federal judicial districts. For example, the number of new criminal proceedings in the D.C. Superior Court last year (excluding traffic cases) exceeded the number of new criminal proceedings commenced in all 94 United States District Courts combined. Data on civil cases also shows that the

Superior Court workload is greater than that of the largest Federal district court.

Recognizing these differences, in January, 1987, the Director of the Marshals Service established the office of Associate Marshal for the Superior Court as a separate unit within the U.S. Marshal's office for the District of Columbia. The office of Associate Marshal was tasked with administering all Marshals Service functions relating to the operations of the Superior Court, thus assuring that both the Federal and local court systems in the District of Columbia would receive the levels of attention they require.

I was honored to have served as the first and -- as it turned out -- the last Associate Marshal for the District, due to the creation by statute last year of the separate office of U.S. Marshal for the D.C. Superior Court. In establishing this position, Congress recognized the need for a separate Marshal's office in the District with responsibility for the discrete set of functions pertinent to the operation of the Superior Court. All Marshals Service functions related to the U.S. District and Appeals Courts, as well as the Service's other Federal law enforcement activities in the District, continue to be the responsibility of the U.S. Marshal for the District of Columbia. This arrangement -- two separate offices of Marshal in the District -- permits a more efficient application of Marshals Service resources and clear lines of accountability for its

duties within both the Federal and local court systems in the District of Columbia.

More specifically, the Marshal's office for the Superior Court has responsibility for the custody of all prisoners awaiting trial and sentencing before the Court, including transporting these prisoners and producing them for proceedings. It is also responsible for executing the orders of the Superior Court and providing security for its 83 judges and commissioners -- which would be increased to 91 under recently enacted legislation.

Mr. Chairman, never has the need for a separate Marshal's office devoted to the requirements of the Superior Court been more intense than it is today. The Superior Court is on the front lines of the escalating drug war in the District of Columbia, which has had a massive impact on the Marshals Service's workload related to the Court's operations. Since I was sworn in as Associate Marshal for the Superior Court in January, 1987, the number of prisoners in our custody in the Superior Court cellblock each day has increased by nearly 80 percent. In fact, the Marshals Service received and processed more than 141,000 Superior Court prisoners (over 60 percent of whom were drug related offenders) in Fiscal Year 1989 -- an increase of over 100 percent in the last three years!

In the same three-year period, the number of civil and criminal orders (summons on complaints, writs, warrants, etc.) executed by the Service for the Superior Court increased by more

than 530 percent, from 1,300 in FY 1986 to 8,400 in FY 1989. These figures do not include the execution of civil eviction orders -- one of the Service's heaviest responsibilities in the District -- almost 24,000 of which were issued by the Superior Court in FY 1989.

To accomplish these tasks, in addition to its court security and other functions, the U.S. Marshal's office for the Superior Court has been allocated 133 full-time positions -- the largest personnel complement of any Marshals Service district and more than twice the number of positions allocated to the office of the U.S. Marshal for the District of Columbia.

Mr. Chairman, my service of more than 19 years in the United States Marshals Service has given me the experience necessary to handle the challenges of the office of Marshal for the D.C. Superior Court. I began my career as a Deputy U.S. Marshal and was promoted through the ranks to the positions of Supervisory Deputy Marshal, Chief Deputy Marshal, Associate Marshal, and finally, the position I currently hold, interim Marshal for the Superior Court under appointment by the Attorney General.

I bring to this position 28 years of professional law enforcement experience. I began my law enforcement career as a military police officer with the U.S. Army. Upon release from active duty, I joined the police department in Manitowoc, Wisconsin, my hometown. I later joined the Metropolitan Police Department here in Washington, subsequently transferred to the

White House Police Department, and, in 1970, entered the U.S. Marshals Service.

Should I be confirmed for the position to which I have been nominated, I am confident that I can continue to manage the functions of that office of in an efficient and effective manner. I also look forward to working with this Committee in seeking new and creative approaches for dealing with the unprecedented challenges facing the criminal justice system in the District of Columbia.

Thank you, Mr. Chairman. I will be pleased to answer any questions you or the Committee might have.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used):

   Ronald Gregory Hein

2. Address: List current place of residence and office address(es).

   - Residence: 4607 Greene Place, N.W.
     Washington, D.C. 20007

   - Business: U.S. Marshals Office
     500 Indiana Avenue, N.W.
     Superior Court House - Room C-250
     Washington, D.C. 20001

3. Date and place of birth:

   December 20, 1941, Manitowoc, Wisconsin

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married to Heidemarie Lilly Hein, Maiden Name: Winheim; employed at as Program Analyst at:

   Selective Service System
   Registration Division
   1023 31st Street, N.W.
   Washington, D.C. 20435

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Attended two courses (6 credit hours) at American University, Washington, D.C., Spring semester 1967 (no degree).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   United States Marshals Service:

   2/89 to Present - United States Marshal for Superior Court
   District of Columbia
   Washington, D.C.

   1/87 to 2/89 - Associate U.S. Marshal for Superior Court
   District of Columbia
   Washington, D.C.

1/85 to 1/87 - Senior Chief Deputy U.S. Marshals
District of Columbia
Washington, D.C.

7/83 to 1/85 - Chief Deputy U.S. Marshal
Northern District of Virginia
Norfolk, Virginia

3/83 to 7/83 - Supervisory Deputy U.S. Marshal
Northern District of Georgia
Atlanta, Georgia

5/80 to 3/83 - Supervisory Deputy U.S. Marshal
District of Columbia
Washington, D.C.

7/74 to 5/80 - Deputy U.S. Marshal
District of Columbia
Washington, D.C.

4/70 to 7/74 - Deputy U.S. Marshal
Northern District of California
San Francisco, California

Police Departments:

1/69 to 4/80 - White House Police Department, Washington, D.C.

6/66 to 1/69 - Metropolitan Police Department, Washington, D.C.

1/64 to 6/66 - Manitowoc Police Department, Manitowoc, Wisconsin

Other:

6/62 to 1/64 - Manitowoc Cement Plant, Manitowoc, Wisconsin

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

7/59 to 6/62, Military Police, U.S. Army (SP4); Serial Number:
RA 16 635 259, honorable discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

N/A

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

N/A

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

N/A

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

N/A

13. Health: What is the present state of your health? List the date of your last physical examination.

Last physical examination - December 1988
Excellent health

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have

been connected, and the nature of your connection with each;

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
(a) federal courts;
(b) state courts of record;
(c) other courts.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

N/A

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

N/A

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation.

Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

N/A